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# Rulings by the Civil Courts

GOVERNING

# Religious Societies

A Collection of Decisions by State and Federal Courts on the Rights, Powers and Duties of Religious Societies, Their Members and Judicatories and Their Property Rights

BY

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## INTRODUCTORY REMARKS

The religious liberty we enjoy and the safeguards built around it by the judicatories as the Common Law of the land are helping to make this the foremost Christian nation of the world.

The tolerance and protection assured to every believer and society of believers is based upon one of the fundamental teachings of Christ, "Love thy neighbor as thyself," taught by no other religious system, and is impossible to him who would deny to his neighbor the privileges he desires for himself.

It is a valuable acquisition to know what the safeguards of our religious liberty are and how to apply them in our every day life and conduct.

This collection of judicial deliverances is therefore, I believe, helpful to every person who desires to know what the civil rights, powers, privileges, and duties of religious associations, organizations, their members, officers and judicatories are.

A practice of over forty years largely as Attorney and Counselor of and for religious associations, their beneficiary establishments and their judiciary and legislative organizations gave me the opportunity to obtain a knowledge of the development and establishment of the Common Law rulings expressed in the opinions and decisions rendered by our Courts, State and Federal.

The system adopted indexing these citations is such, that the desired information on any given point can readily be obtained for an answer by a practitioner to his friend or client on the general principles ruling the case and furnishes the line of further research on special points. A book of this kind should therefore be welcome to the busy Lawyer who has never had any experience in that line and cannot afford to spend too much time in looking it up to be able to give the proper advise.

Decisions on cases from every state, and the influence of statutory provisions thereon and from all the different denominations considered

under their respective rites, rules and regulations are gathered together in this collection so that all those connected with or interested in any religious organization in this country will readily find what they need for their guidance in the exercise of their duties and the maintenance of their rights and privileges.

Considering it to be my duty as well as my privilege at the advanced age of four score and more to use the mental and bodily vitality granted to me by a gracious providence, to undertake this work for which the experience of a life time seems to have fitted me, and to present this collection to the public, requesting a generous consideration and a kind approval of my endeavors to serve the public in a matter of vital importance for the maintenance of peace and the welfare of humanity.

C. M. Boush.

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# Rulings by the Civil Courts Governing Religious Societies

**1** The body of communicants gathered into church-order according to established usage in a town, parish, precinct, or religious society established according to law and actually connected and associated therewith for religious purposes for the time being is to be regarded as the church of such society as to all questions of property depending upon that relation.

Stebbins vs. Jennings 27, Mass. (10 Peck) 172.

**2** The church consists of persons who made a public profession of religion, and who are associated together by a covenant of church fellowship for the purpose of celebrating the sacrament and watching over the spiritual welfare of each other.

A congregation is a voluntary association of persons or families united for the purpose of having a common place of worship to provide a proper teacher to instruct them in religious doctrines and duties, administer the ordinances of baptism etc. First Baptist Church vs. Witherell 24 Am. Dec. 223; 3 page 296.

**3** A corporation whose charter powers are to be used in aid of the propagation and practice of a religious belief is a religious corporation.

*In re* St. Louis Institute of Christian Science 27 Mo. App. 633.

**4** Deists, Theists, free religionists and other infidels, though they may be Unitarians in some sense are not Unitarian Christians. Hale vs. Everett 53, N. H. 9; 16 Am. Rep. 82.

**5** There can not be a sect or denomination of religious persons without any common system of faith.

State vs. Trustees of Township 9 Ohio Co.'s purchase 7 Ohio, St. 58.

**6** The supreme court will not approve a charter for a church with a name so like another church in the same place, so that one may be taken for the other.

*In re* First Presbyterian Church, 2 Grant Pa. Cas. 240.

**7** The statutes organizing the formation of religious societies should be substantially followed, and its express requirements complied with; all the facts required to be stated in the certificate must be stated, and it must be under seal and sworn to. Ferraria vs. Visconcellos 23 Ill. 403; and 31, Ill. 25.

**8** The certificate of incorporation of a religious society is the proper evidence of the fact of incorporation, the record of the certificate is not sufficient.

Jackson vs. Leggett 7 Wend, N. Y. 377.

**9** The acceptance of a charter by a religious society must be an act of the society, as a body, at a meeting regularly held for the purpose. The individual assent thereto by each member, evidenced by their signature is not sufficient.

Shontz vs. Unangst 3 Watts & Sargent (Pa.) 45.

**10** A charter for a proposed corporation for the support of public worship should clearly name the kind or form of worship proposed and distinctly name the kind of church government it is to be subject to.

*In re* charter 1 Del. Co. Rep. 415. Pa.

**11** A religious society which has claimed and exercised the rights and powers of a corporation for twenty years is a corporation *de facto* and capable of taking a charitable bequest though its incorporation is technically defective.

Chittenden vs. Chittenden 1 Am. Law Reg. N. Y. O. S. 538.

**12** When a society of a particular religious sect or denomination is formed with a strictly sectarian or denominational name descriptive of the fundamental doctrine of the sect to which it belongs the presumption is; that it was constituted

for the purpose of promoting the vital and fundamental doctrines of sect or denomination.

Hale vs. Everett 53 N. H. 9; 16 Am. Rep. 82.

**13** The missionary society of the Methodist Episcopal Church whose object as described in its charter are charitable and religious and designed to promote Christian missions is a religious corporation—Young Men's Christian Association organized for the purpose, for the improvement of the spiritual, mental and physical condition of young men, the holding of religious meetings, and the teaching of Bible classes, is a religious corporation, but they are subject to the transfer tax, on bequests. *In re* Watson Estate 70 App. Div. 623, 75 N. Y. S. 1134; 171, N. Y. 256, 63 N. E. 1109.

**14** The constitution is the contract of association in a church binding upon all the parties of it as well as the judicatories thereof; It is the supreme law of the church and must be adhered to by every part thereof.

Boyles vs. Roberts 121 S. W. 805; 222 Mo. 613.

**15** An incorporated church consists of two distinct elements to wit, the church proper and the incorporation which has relation alone to the temporalities of the institution.

DisMukes vs. State 58 So. 195 Ala.

**16** The religious societies whose trustees are incorporated present a threefold aspect; First, the congregation who usually meet together for the purpose of religious worship; second, the church strictly so called, an ecclesiastical body composed of such persons entitled to full church privileges; third, the legal corporate body composed of the board of trustees, each of them acting separately.

Gray vs. Good 89. N. E. 498.

**17** Incorporated religious societies are "civil bodies politic" and are amenable to ordinary courts, and governed by the statutes under which they are organized so far as statutary regulations are prescribed.

Klix vs. Polish Roman Catholic St. Stanislaus Parish, 118 S. W. 1171; 137 Mo. App. 347.

**18** Where a religious society is incorporated under the wrong statute, and is not incorporated under the religious society act, it becomes a *de facto* and not *dejure* corporation, and persons dealing with it are barred from questioning the authority of such corporation.

St. John the Baptist Greek Catholic Church vs. Baron 73, Atl. 422.

**19** An organization, under the statute, by a majority of an unincorporated religious society operates *ipso facto* as a transfer of the right and interest of the individual members to the corporation thereby created.

Gewin vs. Mt. Pilgrim Baptist Church 51 So. 947 (Ala.).

**20** Where the majority of a voluntary religious society belonging to the Baptist faith and with power to rule itself in accordance with the laws of the church organized as a corporation and maintained the same doctrines as the church had before schism, the two factions not dividing on any question of religious doctrine or denominational practice, the minority can not defeat the right of the majority to convey land made to the trustees of the church before incorporation performed by a conveyance to the corporation.

Gewin vs. Mt. Pilgrim Baptist Church 51 So. 947 (Ala.).

**21** Where the trustees of a religious society have been incorporated, the corporation so formed becomes a simple trustee of the society funds and property, with powers to be exercised subject to the direction of the society and the society becomes the *cestui que* trust with both *jus habendi* and *jus disponendi.*

Page vs. Ashbury Methodist Episcopal Church, 78 Atl. 246 (N. J.).

**22** A church constitution which has been acquiesced in for more than forty years will be presumed by the courts to have been legally adopted.

Kuns vs. Robertson 154 Ill. 394; 40 N. E. 343.

**23** A constitution acquiesced in and recognized by a religious society for nearly fifty years is valid and binding thereon. Bear vs. Heasley 98 Mich. 297; 57 N. W. 270.

**24** Acquiescence and use of a constitution by a religious society for fifty years makes it valid and binding on this society. Schlichter vs. Keiter 156, Pa. 119; 27 Atl. 45.

**25** A religious society has a right to prescribe such rules as they may deem proper for preserving order when met for public worship, and may use necessary force to remove a person willfully violating such rules.

McLain vs. Matlock 7 Ind. 525; 65 Am. Dec. 746.

**26** If a religious society be composed of several bodies or branches, whether co-ordinate or subordinate, the rules of the society for the management of its internal affairs and for the adjustment of its relations between its branches constitute the rule by which they should be governed.

Harrison vs. Hoyle 24 Ohio St. 254.

**27** The constitutions of this nation, state and federal, and its laws and customs, all go to show, that this is a religious, Christian nation, and no purpose of action against religion can be imputed to any legislation.

Holy Trinity Church vs. United States, 143 U. S. 465-472.

**28** The general Act 1813, for the incorporation of religious societies and authorizing property to be held in trust for unincorporated religious societies remains in force and is not affected by the Revised Statutes.

Church of the Redemption vs. Grace Church 6 Hun. 166 N. Y. 1875.

**29** Christianity is part of the Common Law of Pennsylvania and maliciously to vilify the Christian religion is an indictable offense.

Updegraph vs. Commonwealth 11 Serg & Rawle (Pa.) 394; Zeitweis vs. Jones *et al.* 63 Pa. 465.

**30** Under the constitution every religious society has its laws within itself. Independent churches have their law in their own separate constitution, associate churches in their own rules and in those of the associate organization.

McGinness vs. Watson 41 Pa. (5 Wright) 9.

**31** A pastor being appointed to draw up a constitution, notified his congregation from the pulpit, that it would be read on a certain day, he did not give notice that it would be acted upon that day. It was duly read and at once adopted on that day. Held that the adoption was irregular, the notice being defective. Appeal of Ehrenfeld 101 Pa. 186.

**32** The doctrine and discipline of all well organized churches provided forms of government for the society, which shall be uniform in all churches of the same denomination, and should any incorporated society presume to enact laws inconsistent with the regularly adopted doctrines and discipline of the church at large, such laws would be set aside by the court on a petition of any person interested.

*In re* charter I. Del. Co. Rep. 415.

**33** All bodies united for religious, charitable or literary purposes though without a written charter or law are to be considered as corporation by prescription or the usage of common law of the state, with all the attributes and incidents of a corporation, by the principles of the common law, and entitled to all rights which are conformable to the customs of the province. Magill vs. Brown Fed. Case No. 8952, Vol. 16-409; Bean vs. Christian Church 61 N. H. 260.

**34** The conveyance of land to an individual and his heirs for the use of the society, constitute him the trustee and the members the *cestui que* trust.

Goessele vs. Bimeler *et al.* No. 5503; 10 Fed. cases page 529.

**35** A corporation for religious charitable purposes which is endowed solely by private benefactions, is a private elemos-

mary corporation, though it is created by a charter from the government.

Society for the Propagation of the Gospel vs. Town of New Haven 21 U. S. (8 Wheat) 464; 5 L. ed. 662.

**36** The trustees of the Methodist Episcopal Church are so far a corporation as to take in succession all grants or donations of real or personal estate made to their churches, or to them and their successors.

Bailey vs. Meth. Episc. Church Freeport 71 Main 472.

**37** The correct way to test the validity of an election of trustees of a church by the congregation is by writ of *quo warranto,* the court has no jurisdiction to proceed on petition under the act of April 29, 1874 P. L. 72; such proceeding must be by *quo warranto.*

Section 8 of the act of April 29th, 1874 P. L. 73 providing for the incorporation and regulation of certain corporations does not authorize a proceeding under the act of July 2d, 1839 P. L. 519, to test the validity of a corporate election.

Adequate and exclusive statutory method of proceeding in such a case is by writ of *quo warranto* to test the right of the parties to the office they claim. It is an error for the Court in a proceeding begun by petition of certain members of a church corporation praying that a congregational election of trustees be set aside for illegal irregularity to declare the election invalid and order a new election.

Petition of James Mathew *et al.* Appeal of Grant Street Reformed Presbyterian Church *et al.* 238 Pa. St. 419.

**38** A conveyance in trust for the sole purpose for a Baptist meeting-house, with a provision perpetuating the trust was not a conveyance on condition which was breached upon the sale of the land but was a conveyance in trust without any implied restriction against the sale.

Trustees for Baptist Church of Wilmington vs. Laird, 85 A. 1082.

**39** Where plaintiff joined a religious society holding to the communistic theory of property ownership and contributed his private property to the society he could not recover the reasonable value thereof in an assumpsit on subsequent withdrawal from the society.

Reese vs. Williams 130 Pac. 887, (Ariz.).

**40** Where trustees of a church sue for specific performance and two of them move to dismiss contrary to the wishes of the members of the church, the court did not err in allowing the suit to proceed under the direction of the other trustees elected in their place.

Berry vs. Second Baptist Church of Stillwater, 130 Pac. 585 Okla.

**41** In the case of a religious congregation, what are the doctrines, adherence to which is a condition of membership, must be determined by reference to the rules, constitution or by-laws of the congregation.

Trusteec of East Norway Lake Norwegian Evangel. Lutheran Church vs. Holvorson 42 Minn. 503; 44 N. W. 663.

**42** To constitute membership in any church there must be a profession of its faith and a submission to its government. A person who withdraws from a church does not continue a member thereof simply because he holds the same faith and tenets with the members of that church.

Day vs. Bolton 12 N. J. Law (7 Hal.) 206.

**43** The question of membership in religious societies or congregations is to be determined by the rules of the religious denomination to which they claim to belong.

American Primative Soc. vs. Pilling, 24 N. J. Law (4 Zach.) 653.

**44** A right as corporator in a religious society is obtained by stated attendance on divine worship therein, and contributing to its support by renting a pew, or some other mode usual in the congregation. Such right cannot be derived by descent

from the founders of the society or from the former contributors to, or worshippers in the same.

Cammeyer vs. United German Lutheran Churches 2 Sandf. Ch. N. Y. 186.

**45** A church charter declared that the subscribers and such others as shall hereafter be admitted or become contributing members should comprize the corporation and that any member who has contributed to the support of the church, one year previous to the election, about being held, a sum not less than two dollars for a pew or a portion of a pew should have a vote. The society afterwards gave up the practice of renting pews and announced free sittings, expenses to be met by contributions. Held that the change was not an infraction of the constitution and that renting or holding a particular pew or seat was not essential to membership.

Commonwealth vs. Morrison 13 Phila. 135.

**46** The character of persons as members of a church corporation under the statue is entirely distinct from their character as a member of the church, and a decision of an ecclesiastical tribunal excluding such person from the church does not effect their right as to the management of the temporal affairs of the corporation.

Baptist Church in Hartford vs. Witherel 3 Page 296; 24 Am. Dec. 223.

**47** A clerk of an ecclesiastical society gave a writing purporting to be a copy of a membership previously lodged with him and certified it as a copy by signing his name with the addition of "clerk." Held that the original was a document of which the clerk of an ecclesiastical society could give an official copy. A certificate to a copy of membership in an ecclesiastical society by a clerk made by signing his name with the addition of "clerk" only, is sufficiently formal.

Price vs. Lyon 14 Conn. 279.

**48** Where a congregation in its constitution adopts certain books as exponents of its doctrines and there arise honest differences of opinion as to the interpretation of the statements

of doctrine in such books, and the constitution is silent as to such matter of interpretation and provides no mode for determining the difference, the civil courts will not hold, that the difference to either interpretation dissolves *ipso facto* a member's connection with the congregation so that he ceases to be a member of the corporation it has formed to hold and control the property. Also held in the same case, that a pastor or trustee did not cease to be a member of the society on adopting the interpretation of passages on Scripture in regard to baptism and the Lord's supper as contained in the catechism of Luther where such interpretation was different from the interpretation contained in the Heidelberg Catechism.

Trustees of German Evang. Society of St. Cloud vs. Henshell 48 Minn. 494, 51 N. W. 477.

**49** The fact that certain members of a church society withdrew and organized another society and then returned to their former society raises no presumption that they forfeited their membership of the church to which both societies belong.

Peterson vs. Samuelson 42 Nebr. 161; 60 N. W. 347.

**50** A withdrawal by an inferior ecclesiastical corporation which had been connected with and subject to the superior jurisdiction of the church, from all connection with said church does not effect the property rights of the seceeding body so as to deprive any person of membership until some action is taken in the matter by the superior church authority.

Amer. Primative Soc. vs. Pilling, 24 N. J. Law (4 Zach) 653.

**51** The association between a religious corporation and its corporators is voluntary on the part of the latter and is dissolved by withdrawing from attendance on its worship, omitting to contribute to its support, and uniting in the establishment of another like corporation.

Cammeyer vs. United German Lutheran Churches, 2 Sanford Ch. N. Y. 186.

**52** The fact that persons claiming to be members of a religious society met for worship and church business in an-

other building than the church edifice does not show that they have withdrawn from the church membership.

Perry vs. Tupper 74 N. C. 722.

**53** What amounts to a voluntary withdrawal of membership from a religious association is a question of law.

Perry vs. Tupper 74 N. C. 722.

**54** A letter of members of a religious congregation to the trustees, stating that they resigned their membership until a new reader should be elected, is not a resignation, but an attempt to create a suspension of their membership until the happening of a certain event when they should have the right to resume it, and there being no provision in the laws authorizing such a suspension, they remained members and were liable under the law to the payment of dues.

Marks vs. Congregation Baruch Amuno 5, Daly N. Y. 8.

**55** The conditional separation of the members into two bodies with the consent and approval of a majority and founded on the contemplated division of the church property—the members still continuing exercising their rights in the corporation—is not secession.

Wiswell vs. First Congregational Church 14 Ohio St. 31.

**56** The formation of a society distinct from the rest of the congregation for the instruction of a portion of it in the doctrines of the same church in another language is not *per se* a separation from the original congregation, though such society has a minister and officers of its own, but it is a circumstance for the consideration of the jury.

Weckerly vs. Geyer 2 11. Sarg & Rawle (Pa.) 35.

**57** Every person entering into a church, impliedly if not expressly covenants to conform to its rules and submit to its authority and discipline.

Lucas vs. Case 72. Ky. (9 Bush) 297; Smith vs. Podigo 145 Ind. 361; 33 N. E. 777.

**58** Where a member of a religious society has been expelled therefrom, his rights are to be determined by its constitution.

Grosvenor vs. United Society of Believers 188 Mass. 78.

**59** If the minority of a church withdraw voluntarily they lose their rights as corporators, but not if they are compelled to leave by a majority.

Gordon vs. Williams 3 Leg. Gaz. (Pa.) 113.

**60** Persons excommunicated from the church can not maintain a bill as representatives and in behalf of members.

Nanes vs. Busby 91 Tenn. (7 Pickle) 303; 18 S. W. 874; 15 L. R. A. 801.

**61** Where the fellowship in an independent religious society has been withdrawn from a member at a regular meeting of a church conference, he is no longer a member and has no vote in a subsequent meeting.

Gipson vs. Morris 73 S. W. 85; 31 Tex. Civ. App. 645.

**62** When one becomes a member of a voluntary religious association he subscribes to all its rules and regulations and consents to the exercise of such powers as have been conferred on its managing officers and is bound thereby in the future conduct of its officers.

Clark vs. Brown 108 S. W. 421.

**63** The right of membership in a church and congregation of a religious denomination is an ecclesiastical question relating to the government and discipline of the church, and the decision of the ecclesiastical authorities is binding on civil tribunals.

Westminster Pres. Church of W. 23d Street vs. Trustees of Presbytery of New York, 127 N. Y. St. 836; 142 App Div. 855.

**64** Where neither the charter nor the by-laws of a corporation prescribe any particular form in which the members may resign, their rights of membership and their resignation be accepted, such resignation and acceptance may be implied from the acts of the parties.

State vs. Aucker 2 Rich Law N. C. 245.

**65** A by-law of a religious society provided that any member ceasing to worship, or failing to contribute for a year should be dropped. Held, that a member could be dropped only by a vote of the society after a hearing.

Gray vs. Christian Soc. 137 Mass. 329, 50 Am. Rep. 310.

**66** A religious corporation has nothing to do with the church represented by it, except that it provides for its temporal wants and consequently no action can be maintained against the corporation for the expulsion of a member from the church. Hardin vs. Baptist Church 51 Mich. 137; 16 N. W. 311.

**67** The deacons of an unincorporated church governed wholly through its congregation authorized as the constituted authority of the church to control the use of its property which was conveyed to trustees in trust for the church have authority to exclude those members who refuse to recognize the authority of the regular organization.

Fulbright vs. Higginbottom 133 Md. 668; 34 S. W. 875.

**68** Where a church organization has no rules regulating the expulsion of members, those of the common law prevail, and before a member can be expelled, notice must be given him to answer the charge made against him and an opportunity offered to make his defense, and an order of expulsion without such notice is void.

Jones vs. State 28 Nebr. 495; 44 N. W. 658.

**69** The action of a faction of a congregation in declaring without notice, hearing or evidence, the members of the other faction withdrawn or suspended, will in a civil action involving property rights be considered of no effect.

West Koshkonong Congregation vs. Otteson, 80 Wis. 62; 49 N. W. 24 Dieterick vs. Lampson 58 Tenn. (11 Hash.) 523.

**70** Members of a church refusing to follow the decrees of the church judicatories abandon all interest in its property.

Wallace vs. Hughes 115 S. W. 684.

**71** One joining a church under supervision and control of church courts thereby agrees to abide by the rules of the church government and the judgments of the church courts regularly made, and agrees that all his rights as a member shall be governed by such rules and judgments.

Permanent Committee of Missions of the Pacific Synod of the Cumberland Presbyterian Church vs. Pacific Synod of the Presbyterian Church in the United States 106 Pac. 395.

**72** Where it does not appear that a general council composed of representatives of local churches of a sect was ever legally organized, or if it was, that it was invested with any authority over the local churches either by direct action of the churches or by action of the legally authorized representatives thereof its action excommunicating a pastor of a local church for propounding certain doctrines, would be no ground for enjoining the pastor and his followers among his congregation from using the church property.

Mason vs. Lee 50 So. 625.

**73** Where a church building was erected with the proceeds of a sale of pews and the pewholders and their successors become members of a voluntary unincorporated religious society the expenses of which were met by taxes and rentals on pews, the pewholders under the constitution being the society, the title and beneficial interest in the church is in the pewholders. Small vs. Calhoon 93 N. E. 588.

**74** Membership in a church is an ecclesiastical matter depending on the laws of the church itself and the Court must leave to the ecclesiastical body the determination of the question as to who shall be admitted or continued in the church.

Jackson vs. Hopkins 78 A. 4 (Md.).

**75** A member of an unincorporated religious society not founded for the purpose of gain or pecuniary profit is not individually liable for its debts unless he authorized the incurring of the obligation or subsequently ratified the same.

First Nat'l Bank vs. Rector 80 N. W. 269; 59 Nebr. 77.

**76** The real debtors in a finding of an amount due from a congregation of an unincorporated church are the members of the church at the time the debt was contracted, who can be shown to have in some way sanctioned or acquiesced in its creation. Males vs. Murry 23 Ohio Cir. Ct. Rep. 396.

**77** Though the members of a voluntary association contracting in its behalf become jointly liable yet where a preacher contracting with the members of an unincorporated religious society for employment knows that the expenses of the church are raised by assessments on, or voluntary contributions by its membership, the members are not liable *in solido*.

Riffe vs. Proctor 74 S. W. 409, 99 Mo. App. 601.

**78** An unincorporated church organization is not liable on its contracts and for that reason an officer of such an organization who signs one is not liable in his official capacity. An officer of an unincorporated church who signs a contract is liable individually, though not officially regardless of his intent to bind himself.

Summerhill vs. Wilkes 133 S. W. 492.

**79** The members of a religious society which has not been incorporated nor had its name recorded, are liable on its contracts as joint promisors or partners.

Thurmond vs. Cedar Springs Baptist Church 36 S. E. 221; 110 Ga. 816.

**80** A creditor of a church corporation is not the creditor of the members of the church, and has no right of action against them as such.

Allen vs. North Desmoines Meth. Episc. Church 102 N. W. 808, 127 Ia. 96; 69 L. R. A. 255.

**81** Members of a church organization having no legal existence who are directly instrumental in incurring liabilities for it; or who have authorized transactions made in its name, are personally liable, while those members who do not in any way take part in such transactions are exempt from liability. Members of the building committee of the same through

whom material for the construction of a church are purchased, are liable therefore, though the sellor charge the materials in the name of the society, and at the time was told, that the money for the payment was to be raised by subscriptions among the congregation and by fairs.

Clark vs. O'Rourke 69 N. W. 147; 111 Mich. 108.

**82** In mandumus to restore petitioner to his rights as member of a church corporation, the accounting warden of the church appointed by the *de facto* officers thereof may appear and file return to alternative writ.

Woodward vs. Church Trustees, 14 Wkl. Notes of Cases 240 (Pa. 1884).

**83** The only constitutional method by which a congregation can express itself is by a congregational meeting regularly called. Appeal of McAuley 77 Pa. (27 P. F. Smith) 397.

**84** It is not necessary that a majority of the members be present to constitute a corporate meeting of a religious society. Those present at a regular meeting constitute a quorum and a majority of them can pass a resolution.

Madison Ave. Baptist Church vs. Baptist Church in Oliver St. 2 Abb Prac. N. Y. (N. S.) 254; 32 Howe Prac. 335 (affirmed 31 N. Y. Super. St. 109).

**85** Courts of justice can not regard the wishes of a majority of the members of a corporation unless expressed in a valid form in conformity with the by-laws and charter.

German Evang. congregation vs. Pressler 14 La. Ann 799.

**86** A meeting of the church members of a religious corporation and pew holders as such is not a meeting of the incorporated society and can not instruct the trustees in their duties or can assume any power over them.

Baptist congregation vs. Scannel 3 Grant Cases Pa. 48.

**87** The rules of a church require its trustees to be elected on a particular day of the year, notice given on the previous Sunday by the pastor; a board of trustees elected on a different

day without the notice, are not trustees *dejure* or *de facto,* and the previous trustees holding over may resist their taking possession of the church property.

First Afr. Meth. Episc. Church vs. Hilley, 51 Cal. 155.
Miller vs. Engl, 21 N. J. Law (1 Zach) 317.
Am. Prim. Society vs. Pilling 24 N. J. Law, (4 Zach) 653.
People vs. Runkle 9 Johnson N. Y. 147.

**88** If a society votes to hold their annual meeting on a certain day in each succeeding year the meeting held on the day fixed without further notice is illegal under the statute requiring notice, though a practice so holding them has been established for a number of years.

Hickock vs. Hoskins 4 Day Conn. 62; Weber vs. Zimmerman 22 Md. 156.

**89** To constitute a valid election of officers of a religious corporation notice should be given in conformity to the charter.

Smith vs. Erb 4 Gill (Md.) 437.

**90** The charter of a religious corporation requiring two-thirds to form a quorum, it was stated on the minutes, that on due notice the corporation met, and it was not usual to mention the names or numbers of those present. Held equivalent to a statement that two-thirds were present.

Commonwealth vs. Woelper, 3 Serg & Rawle (Pa.) 29; 8 Am. Dec. 628.

**91** The words annual subscribers were used in the canon of the Protestant Episcopal Church prescribing as a qualification to the right to vote for wardens and vestrymen. That a person shall be an annual subscriber to the support of the minister of the church; means one who subscribes an annual sum to such support, and not one who occasionally or otherwise contributes to such support.

State vs. Stewart 6 Houst Del. 359; Livingston vs. Trinity Church 45 N. J. Law (16 Vroom) 230.

**92** A person is not entitled to vote as a member of a Presbyterian congregation who does not contribute his just proportion according to his own engagement or the rules of

that congregation to all the necessary expenses of the church. An election of trustees of a Presbyterian Church made by persons not being contributors to the support of the church (and thereby not qualified by their rules to vote) is void.

State vs. Crowell 9 N. J. Law (4 Halst) 390.

**93** Where there is a definite body in a corporation the majority of that body must not only exist at the time when any act is to be done by them, but a majority of them must attend the assembly, where the act is to be done.

Moore vs. St. Thomas Church 4 Abb, N. C. (new cases) 51 N. Y.

**94** Officers of a religious society who preside at its election and are authorized to decide on the qualification of voters are not liable for refusing a qualified vote through error of judgment but in good faith. Election inspectors of a corporation may exercise sound discretion in deciding whether a person offering to vote has lost membership and right to vote by a voluntary separation from the congregation though he has not been proceeded against and disfranchised under church regulations applying to cases of delinquency and not to a voluntary separation.

Weckerly vs. Gyer 11 Sag. & Rawle (Pa.) 35.

**95** In a religious corporation the election inspectors must finally determine upon the qualification of the elector when he offers his vote and before he casts it; after they have received it they can not throw it out on the ground that he is not qualified. Hart vs. Harry 32 Barb. N. Y. 55.

**96** Two things must concur to qualify a person to become a voter at an election held by a corporate religious society, after the first election.

1st, Stated attendance on divine worship in the church congregation or society for the term of one year previous to such election, and; 2d, contribution to the support of said church. Stated attendance must be interpreted to mean the personal presence of the voter himself, statedly at the religious meetings of the society. The regular attendance of his wife

or other member of the family is not sufficient. The contribution and support must be according to usages and customs thereof and it implies that the contributions must be of a vital and substantial character. Persons attending the religious meetings of the society but a few times in the course of a year, or only occasionally though a regular contributor to its support are not voters within the meaning of the act of incorporation of religious societies.

People vs. Tuthill 31 N. Y. 550.

**97** Excommunicated church members are not entitled to vote at an election for trustees.

Shannon vs. Frost 42 Ky. (3 B Mon) 253.

**98** Where it has been the usage of a consistory for a great many years to make nominations for elders and deacons, and for the officiating minister to announce the names of the nominees from the pulpit for two consecutive Sundays previous to Easter Monday, the day of election, and none could be voted for, save and except those who had been proclaimed from the pulpit as nominees, and such use is not in conflict with the charter of incorporation of the church, it is binding upon the congregation and must be observed on the annual election of elders, so long as it remains unrepealed and unaltered.

Miller vs. Eschbach, 43 Md. 1.

**99** The Reformed Dutch churches in New Jersey are not required to choose trustees to manage their temporal concerns, like other religious associations, but the minister, elders and deacons for the time being taking the prescribed oath of office are by statute the corporate trustees and are entitled to take and hold the property and direct and control the business of the corporate body.

Day vs. Bolton 12 N. J. Law (7 Halst.) 206.

**100** In an action to determine the rights of the plaintiff's as trustees of a church as a branch of the African Methodist Episcopal Zion's Church, and for 28 years had sent delegates to, and received its ministers from the conference of that connection, had conformed to its discipline and had paid the

charges assessed by the conference, the church must be considered as belonging to that connection, and trustees elected in the manner prescribed by the discipline are the lawful trustees of the church. Simmons vs. Allison 118 N. C. 763, 24 S. E. 716.

**101** Where a preacher in charge of a Methodist Church society appoints certain named persons trustees of the society, by a certificate drawn in accordance with the discipline of the church they are properly entitled trustees to hold the society property. Trustees First Society M. E. Church Newark vs. Clark, 41 Mich. 730, 3 N. W. 207.

**102** A certificate of election of trustees of a church is admissable in evidence in *quo warranto* against such trustees, though the same be not granted until months after the election, though the statute provides that the presiding officer shall certify results immediately.

People vs. Peck 11 Wend N. Y. 604. 27 Am. Dec. 104.

**103** The certificate of election directed to be given to trustees by sect. 6 of the act for the incorporation of religious societies, is only evidence of the title, which may also be shown *aliunde,* and even as evidence it is not conclusive, but only *prima faci.* The omission to furnish it does not disquality a person duly elected.

North Baptist Church vs. Parker 36 Barb. N. Y. 171.

**104** By statute regulating elections for wardens and vestrymen of the Protestant Episcopal Church the pastor is the presiding and returning officer, and persons holding his certificate are *prima facie* entitled to the office to which they appear to be elected.

People vs. Lacoste 37 N. Y. 192.

**105** A certificate of election of trustees of a religious society which did not show that the notice of the time and place when the election should be held was given as provided by statute is insufficient to show such election.

Kulinski vs. Danbrowski 29 Wise 109.

**106** Trustees of church property are not necessarily, in the Baptist Church, communing members, and accordingly excommunicated from communing membership does not disqualify them even if the excision be rightful.

Bouldin vs. Alexander 82 U. S. (15 Wall) 131, 21 Leg. Ed. 69.

**107** Where officers *de facto* are elected at an election of a religious corporation and they act, they are presumed to pursue the proper measures for an election for the next year, which when held makes their successors officers *de jure*.

Smith vs. Erb 4 Gill Md. 437.

**108** If a minority of a church congregation not attending within the regular organization get together and assume to elect trustees it has not the color of an election by the congregation. One cannot be a *de facto* officer of a religious society unless he is acting as such under color of having been rightfully elected or appointed.

Trustees of East Norway Lake Norwegian Evang. Lutheran Church vs. Halvorson 42 Minn. 503; 44 N. W. 663.

**109** When the term of an office of an officer duly appointed by a religious society is not limited in time, the presumption is that he remains an officer until competent evidence of his removal is given, and whosoever claims on the ground that the term of office has ceased must establish it by sufficient proof. Hendrickson vs. Shotwell 1 N. J. Eq. (Saxt) 577.

**110** The committee of an ecclesiastical society appointed as provided by statute to order the affairs of the society for the ensuing year continue to hold their office after the expiration of the year until superseded by the appointment of another committee. Congregational Society of Bethany vs. Sperry, 10 Conn., 200.

**111** A pastor who was suspended began preaching in another building and seven of the trustees of the church followed him and attended his services. An election was held and three new trustees elected who together with those remaining with

the church attempted to act as trustees. Held, that if the term of the previous trustees had not expired, and they had not resigned and the announcement that their offices were vacant did not depose them and the election was a nullity.

Eristor vs. Burr 120 N. Y. St. Rep. 638; 24 N. E. 937.

**112** Statutes providing that whenever a trustee of a religious corporation ceases to be a member of the church congregation or society, ceased to steadily attend and support its services, he shall cease to be a trustee. A trustee becoming a corporator of a new new church ceases to be such trustee and is without power to sign on behalf of the church of which he was a trustee an agreement or petition for consolidation with another society.

*In re* Methodist Episcopal Society of Rome, 51 Hun, 104; 4 N. Y. Supp. 723.

**113** Where membership is a necessary qualification of the trustees who are to manage the affairs of the corporation, a trustee who withdraws himself from the church and joins a church of another denomination which latter church prohibits a connection by its members with the former, will be considered as having abandoned his office of trustee and as having no further interest in the property of the church he has left.

Ross vs. Crockett 14 La. Ann 811.

**114** If a trustee withdraws from a religious society he ceases to be a trustee and the society can elect another.

Laight St. Baptist Church vs. Noe 18. How. Pract 497.

**115** Where a majority of a church contrary to the fact that a portion of the trustees elected have resigned and refused to act, proceeded to elect others in their place without notice to the minority of the congregation, and such others wrongfully assume to act, the law furnishes an appropriate remedy against them by *quo warranto,* or by bill in comity to restrain their unlawful acts.

Nelson vs. Benson 69 Ill. 27.

**116** The fact that by a rule of the church the deacons become *ex-officio* trustees of the corporation cannot put the religious body and its election of deacons under the control of the temporal courts.

Atty. Genl. vs. Geerling, 55 Mich. 562; 22 N. W. 89.

**117** Equity cannot inquire into the validity of elections of officers of a church duly incorporated and enjoin them from exercising the duties or enjoyments of the franchise of office, but the remedy is by *quo warranto*.

Trinity Church vs. Wardens and Vestrymen 3 Ohio Dec. 524.

**118** *Quo warranto* is the proper remedy against a person alleged to be usurping the office of trustee of a chartered church, and not a bill in equity to enjoin him.

Nolde vs. Madden 4 Lancaster, Pa. Law Rev. 347; 15 Atl. 777.

**119** Religious corporations in Wisconsin are civil corporations and governed by the statute and such rules of the common law as may be applicable, and a court of equity has no authority to oust persons claiming to be legally in possession of the corporate offices and enstall others. The proper remedy is by *quo warranto*.

Fadness vs. Brownberg, 73 Wis. 257; 41 N. W. 84.

**120** A church accepting the services of a sexton is liable to him therefore, whether the by-laws were observed in employing him or not, nor will the fact that another party—as here the ladies of the Altar Society—agreed to contribute the half of his annual salary—defeat the recovery of the whole from the church employing him.

St. Patrick's Roman Catholic Church vs. Abst. 76 Ill. 252.

**121** Where expenditures and disbursements are made in good faith for the erection of a house of worship even though such expenditures may exceed the amount of the trust, if it appear that they acted with reasonable prudence, they should be reimbursed and the amount paid charged upon the trust estate. Bradbury vs. Birchmore 117 Mass. 569.

**122** Trustees who form a new society to apply the uses of the property of the former society thereby cease to be trustees of the former and may be enjoined accordingly.

First Reformed Presbyterian Church vs. Bouden 10 Abb N. C. 1; affirmed 144 Abb N. C. 356.

**123** The failure of a notice calling a special meeting of the trustees of a religious corporation to state the object of the meeting renders the action taken at the meeting in the absence of at least two of the trustees invalid and illegal.

McLaury vs. Bart, 121 N. Y. 636; 24 N. E. 1013.

**124** The trustees, deacons, church wardens or other similar officers of unincorporated societies shall have the same power as incorporated societies to manage, use, and employ according to its terms and conditions any gift or grant made to them. A voluntary society possesses for the purposes of taking, holding, and transmitting property all the qualifying attributes of a duly organized corporation.

First Baptist Church of Sharon vs. Harper, 77 N. E. 778, 191 Mass. 196.

**125** A church if incorporated should be sued by its corporate name, otherwise the individual members may be sued collectively, or if too numerous to admit all being brought before court, one or more may be sued and may defend for the whole. Kellen vs. Tracy 11 Iowa 530.

**126** A committee appointed by a church to bring an action for its protection need to produce no other evidence of their authority than the entry of their appointment on the record kept by the secretary. They need not be members of the congregation. Humphrey vs. Burnside 67 Ky. (4 Bush) 215 (Ky. 1868).

**127** Where a corporation without other authority than granted by "an act in relation to incorporated religious societies" passed March 5th, 1836, engages in the business of banking for the purpose of receiving on deposit and keeping and circulating the money of others, such business comes within

the prohibition of the first section of "an act to prohibit unauthorized banking" etc. passed March 12, 1845, and a note discounted in the transaction of such business is illegal and void.

William Huber vs. The United Evang. Protestant congregation of Cin. 16 Ohio, 372.

**128** A committee appointed by German Lutherans in actual possession of premises in dispute may maintain a bill in their own names to prevent a disturbance of their possession, against the heirs of those who have dedicated the land to the use of such German Lutherans, and who are attempting to regain possession of the same. A part of the same society may sue for purposes common to all and beneficial to all.

Berryman vs. Reese 50 Ky. (11 B. Mon) 287; Beatty vs. Kurtz 27 U. S. (½ Pet.) 566; 7 L. Ed. 521 (U. S. 529).

**129** Religious societies incorporated can only sue by their trustees and can be reached by suit only through their trustees, as a church they can not sue or be sued, but action by or against them must be brought by or against the trustees.

Ada Str. Methodist Episcopal Church vs. Garnsey 66 Ill. 132.

**130** A church organization can sue only in the name of "Wardens and Vestrymen of . . . Church . .," or in the name of "Trustees of . . . Church . . . .."

Drumheller vs. First Universalist Church of Pierceton 45 Ind. 275.

**131** The legal title to the property is invested in the trustees of the church for convenience in its control and management for the purpose of the trust, they have no power to pervert it, or prevent it from being used for those purposes. The power is subordinate to the customs and rules of the organization. Bruennenmeyer vs. Buhre 32 Ill. 183.

**132** In Cammeyer vs. German etc. Church, 2d Sanford Chanc. N. Y. 186, the court by Vice Chanc. Sanford said, "The trustees of a religious society can alone bind a corporate society, and in order to execute the power, the trus-

tees must meet as a board, so they may have each other's view, and deliberate and decide the question before them. The separate action of the trustees individually without consultation although a majority in number should agree upon a certain act would not be the act of the constitutent body of men clothed with the corporate powers."

**133** In Robertson vs. Ballious 11 N. Y. (I Kernan) 251 the court by Sheldon J. said, "What then are the rights, powers and obligations of this class of corporate officers, and to what extent has this court jurisdiction over them? These questions are to be answered in view of the statute authorizing the corporation of these societies and the rules which regulate other corporations of the same legal character and their officers, to those particular principles which are applied to trusts by courts of equity. These officers are trustees in the same sense with the president and directors of a bank or of a railroad company. They are the officers of the corporation to whom is delegated the power to manage its concerns for the common benefit of themselves and all the other corporators and over whom the body corporate retains control through its power to supercede them at every recurring election. . . . . But if it be admitted that a court of equity has power by virtue of its general jurisdiction over every species of the trust to intercede at the instance of a corporator in case of gross violation of duty by the managing officers of a civil corporation which is at least doubtful, the question still remains, how may this question be exercised? Does it extend to the removal of the officers of the corporation? It is difficult to conceive from what source the court, independent of legislative enactment could derive such a power. This class of officers receive their authority directly from the sovereignty of the state. The statute prescribes their qualifications, the mode of their election and the tenure of their offices; what power has the court of chancery or any other court to set aside the statute to impose conditions to the holding of an office which the statute does not impose? There is a wide difference between this description

of officers and mere private trustees whose powers rest solely upon individual contract. There, if the conditions of the contract be violated the office is rightfully vacated, and the court might enforce its forfeiture at the instance of the party aggrieved. But the powers of the corporate officers have a source above that of mere private contract over which the court of chancery has no paramount authority.

Lawyer vs. Cipperly 7 Page N. Y. 281; Bowden vs. McLeod 1 Edw. Chan. N. Y. 588; Kriskern vs. Lutheran Church 1 Sandf. Chan. N. Y. 439; Tyler Escl. Law page 98, para. 212.

**134** In people vs. Runkle 9 Johnson N. Y. 147, the court said, "The trustees have a possession and custody of the temporalities belonging to the church whatever the same consists of, real or personal estate. They must therefore be considered of being *virtitute officii* entitled to the possession and lawfully seized of the ground and of the buildings belonging to the church.

**135** In people vs. Fulton 11 N. Y. (I Kernan) 94 the court by Denio J. said, "Incorporated religious societies are aggregate corporations and whatever property they acquire, whether it be real or personal, is vested in interest in the body corporate and while the officers have under their control or dominion whatever possession they have, is the possession of the artificial person whose agent they are. Although they are called trustees, they do not hold the property in trust for the corporation or religious society. The name is simply the title of their office and their position respecting the corporate property would be the same if they were denominated directors or managers. Their right to intermeddle is an authority not an estate or a title, they have no other possession than the directors of a bank have of the banking house . . . . it is the person who has the legal right to the possession who can institute the proceedings in the case of forcible entry and detainer.

See also Watson vs. Jones 13 Wallace U. S. 679 and Miller vs. Gable 2 N. Y. (Denio) 492.

**136** In the Dutch Reformed Church every minister, elder or deacon properly called and instituted is *virtute officii* a trustee and remains such as long as his office continues or until removed, or secession.

Doremus vs. Reformed Dutch Church 3 N. J. Eq. 332.

**137** It must be shown positively that the property of the society will be impaired, or the right of the beneficiaries imperiled before the removal of a trustee will be ordered.

Determan vs. Luehrsman 74 Iowa 275, 37 N. W. 330; Cicotte vs. Church of St. Anns 60 Mich. 552, 27 N. W. 682; Field vs. Field 9 Wend N. Y. 394.

**138** The Committee of an ecclesiastical society has power to defend at the cost of the society against legal proceedings endangering either the existence of the corporation, or its rights of property, for instance an injunction forbidding the sale of its pews.

Harbison vs. First Presbyterian Soc. 46 Conn. 529.

**139** The committee of an ecclesiastical society has no power to defend at the cost of the society against a proceeding effecting themselves only personally as a committee, to test whether they were legally elected.

Harbison vs. First Presbyterian Soc. 46 Com. 529.

**140** A church can not be bound by the action of the trustees beyond the express powers granted by the members.

Millers vs. Church 4 Phila. 48.

**141** The trustees of a religious corporation can alone bind the corporate body, and to execute this power they must meet as a board, so that they may hear each other's views, deliberate and decide, the separate actions of the trustees individually without meeting and consulting together as a board though a majority in number should agree upon a certain act is not binding on the corporation, and can not of itself create a corporate liability. Constant vs. St. Alban's Church 4 Daly 305 N. Y.; Nw. Nebanezer Ass. vs. Gress Lumber Co. 89 Ga. 125; 14 S. E. 892; Kapler vs. South Parish in Augusta 12 Mass. 185; Cammeyer vs. Lutheran Churches 2 Sandf. Chan. 186 N. Y.; *In re* Rittenhouse estate 140, Pa. 172, 21 Atl. 254.

**142** A church will not be bound by a note which was executed by two of its trustees, and then sent around to the other trustees and their signatures obtained, it not appearing that there was any vote of the board of trustees at any authorized meeting to execute the note or to borrow the money for which it was given. Dennison vs. Austin 15 Wis. 366.

**143** A religious society is not bound by the act of its trustees acting personally nor by the act of a majority of them convened together unless such convention is an authorized official meeting pursuant to a call addressed to all the trustees.

United Brethren of New London vs. Vanduson 37 Wise 54.

**144** A religious society which has founded an educational institution, is divested of all title to the property and of power of management by the incorporation of a board of trustees under a charter which confers on them the power to hold the property and to manage the school in all its affairs.

Trustees of Union Baptist Association vs. Huhn, 7 Tex. Civ. App. 249, 26 S. W. 755.

**145** All the church property belonging to a religious corporation both real and personal is vested in the trustees and they have the entire control over it. The use of the property and the employment of the minister ought to be sanctioned by them, it is their right if not their duty to withhold their assent, where there is a reason to believe that employment of a minister, selected by a majority of the church, will destroy the peace and harmony of the congregation or of the church.

German Reformed Church vs. Busche 7 N. Y. Super. Ct. (5 Sandf.) 666.

**146** On the refusal of the treasurer or clerk of a religious society, whose term of office expired, to deliver the records and papers of the society to his successor in office, mandamus will issue on the petition of the society to compel him to do so. Proprietor of St. Luke's Church vs. Slack 7. Cush. Mass. 226. Fasnacht vs. Germ. Literary Ass. 99 Ind. 133. Am. Railway Frog Co. vs. Haven 101 Mass. 398, 3 Am. Rep. 377.

**147** When a term of office of a secretary of a corporation expires it is his absolute and legal duty enforceable by mandamus to deliver upon demand all the property in his possession by virtue of his office whether his accounts as secretary have been adjusted or not.

State ex. rel. State Savings Bldg. and Loan Asso. vs. Davis 54 Md. App. 447.

**148** Trustees of a religious corporation can not bind it by their covenant unless duly authorized.

Klopp vs. Moore 6 Kan. 27.

**149** The trustees of a religious society will not be permitted to allow claims against the society which are barred by the statute of limilation.

*In re* Orthodox Congr. Church in Union Village 6 Abb. N. C. 398.

**150** The trustees of an incorporated society alone can represent it in making contracts.

Baptist congr. vs. Scannel 3 Grant Cases 48.

**151** The president and secretary of an incorporated religious society have not implied authority to bind the society by a promissory note without authority from the board of trustees.

Cattson vs. First Universalist Soc. 46 Iowa, 106.

**152** Though a note given by the trustees of a Methodist Episcopal Church to raise money to build a church was signed by them individually without any official designation, so that it might be negotiable, the obligation was of the church and the church premises might be sold under execution to pay it.

Bushong vs. Taylor 82 Mo. 660.

**153** A religious corporation is not liable for an overdraft in a bank account held by its treasurer without the knowledge or authority of the corporation or its board.

Columbia Bank vs. Gospel Tabernacle Church 127 N. Y. 361; 28 N. E. 29.

**154** The action of trustees of a religious society in giving their note for a debt incurred in rebuilding the meeting-house, being for a necessary legitimate object was within the implied

powers of the trustees of the society was liable for money had and received though no such authority was actually granted to the trustees. First Baptist Church vs. Conney 85 Pa. 271.

**155** Where the majority of the trustees of a religious society executed a judgment note in the corporate name to persons who had a claim against the society constituting a lien on the church building and included in such note the amount of a certain claim in favor of such trustees personally against the society apparently for the purpose of incumbering the church property and subjecting it to sale, held that this was fraud in fact and a violation of their duty as trustees.

United Brethren of New London vs. Vandusen, 37 Wis. 54.

**156** Where a building committee of an unincorporated religious society consists of five members and one of them assumes authority to make a contract on behalf of the committee and afterwards his contract is ratified by a majority of the committee the result is the same as if authority had been conferred originally, but no ratification will suffice unless it is attended with the knowledge of all the material facts or is made under circumstances from which such knowledge may be fairly assumed. New Ebenezer Asso. vs. Gress Lumber Co. 89 Ga. 125, 14 S. E. 892.

**157** In an action against an ecclesiastical corporation on a note, the defendant cannot escape liability on the ground that the person who executed the note had no special authorization so to act, where it appears that the execution was ratified by the vestry. Donnelley vs. St. John Prot. Episc. Church 26 La. Ann 738.

**158** Where at the time a loan is made to a church it is understood that the loan is to be secured by a mortgage of lands of the church, and that the trustees thereof shall not be personally liable, such trustees will not be personally bound by bonds signed by them to evidence the loan and secured by such mortgage.

Elwell vs. Tatum 6 Tex. Civ. App. 397, 24 S. W. 71.

**159** A bond executed in the individual names and seals of certain persons described as trustees of the Baptist society of the town of R. is the bond of such individuals and not the society. Taft vs. Brewster 9 Johns, N. Y. 334, 6 Am. Dec. 280.

**160** A bishop is not personally liable for the salary of a priest whom he engages.

Rose vs. Vertin 46 Mich. 457, 9 N. W. 491, 41 Am. Rep. 174.

**161** A call to a Presbyterian minister in the words prescribed in the constitution of the church, signed by three elders as trustees, does not bind them to pay the minister's salary, but is to be regarded as the act of the congregation.

Paddock vs. Brown 6 Hill N. Y. 530.

**162** The deacons of an unincorporated religious society who are *ex-officio* agents for the management of its property, cannot be held personally liable on a contract made by other agents of the society unless it is clear that the former participated in the appointment of the latter, or in some way ratified such contract. Devoss vs. Gray 22 Ohio St. 159.

**163** No action lies in favor of a Roman Catholic priest against his bishop for salary or support for period his bishop refused to assign him a charge.

Tuigg vs. Shehan 101 Pa. St. 363; 47 Am. Rep. 727.

**164** Where a written contract for the building of a church edifice was entered into by the defendants as the committee of a religious society on its behalf and was subscribed by them as such, the intent being clearly to bind the corporation as principle and not the defendants as agents, and the name of the principal and the fact of the defendants' agency as well as the want of individual interest in the defendants in the subject matter in the contract all appeared on the face of said contract; these facts might be pleaded in bar of an action upon said contract against the members of the committee personally.

Stanton vs. Camp 4 Barb. 274.

**165** The mere fact that the defendants were trustees of a church would not make them personally liable in an action on a note given by the pastor expressing on its face that it was a loan to the church and the complaint averring that the pastor was authorized to make the loan.

LeSaint vs. Fisler 8 Ohio Dist. Ct. 216; 8 Weekly Law Bull. 337.

**166** A member of a church building committee agreeing as one of the committee to pay for articles sent to him, and used by him in the erection of a church, is personally liable for the value of them, where he did not expressly limit the extent of his obligation.

Cruse vs. Jones 71 Tenn. (3 Lea) 66.

**167** A note given for church furniture signed by the deacons of an unincorporated society in their official capacity binds them individually and not the society.

Burton vs. Grand Rapids School Furniture Co., 10 Tex. Civ. App. 270; 31 S. W. 91.

**168** Where contractors proposed in writing to erect a church building and addressed the same to the building committee and the proposition was accepted by W. & B., over their individual signatures and the contractors proceeded with the work and received a large portion of their pay from the pastor of the church representing the congregation. Held, that the contract with W. & B. as a building committee, that these persons were not personally liable on the contract.

Johnson vs. Welsh 42 W. V. 18; 24 S. E. 585.

**169** In a suit on a treasurer's individual bond his official statement made during the period covered by the bond but after his removal for misconduct is competent *prima facia* evidence.

Father Mathews Young Men. Abst. and Ben. Soc. vs. Fitzwilliam 12, Mo. App. 445, affirmed 84 Mo. 406.

**170** Trustees of a non-incorporated religious association have legal capacity to sue in equity in behalf of such association; if not as trustees, as members thereof.

Callson vs. Hope (D.C.) 75 Fed. 758.

**171** Independent of statute, a committee appointed by a church for that purpose may bring suit to enjoin trespass upon church property.

Bennett vs. Morgan 66 S. W. 287; 112 Ky. 512; 23 Ky. Law Rep. 1824..

**172** Trustees and agents of a church society may bring an action in behalf of themselves and other members all having a like interest in the subject matter.

White vs. Rice (Mich.) 70 N. W. 1024; 112 Mich. 403.

**173** In an action by the trustees of a religious society for the negligent burning of a church, the court will not inquire into the ecclesiastical standing of the trustees, nor as to their relation to the general conference of the religious denomination to which they belong or have belonged.

Zion's Church of the Evangelical Association vs. Laight, 7 Pa. Super. Ct. 223; 42 W. N. C. 251.

**174** A member of a church of an unincorporated society, the members of which are too numerous for their all suing, may sue in behalf of himself and the other members for a debt due the church.

Perkins vs. Siegfrieds Admr. 34 S. E. 64; 97 Va. 444.

**175** An action to recover church property may be brought in the name of the trustees.

Gaff vs. Geer 88 Ind. 122.

**176** An attorney at law who is a trustee of a church may be employed by his co-trustees to render professional services for the church and become entitled to compensation. The simple fact that services were rendered does not raise a liability on the part of the person to whom they were rendered, even though done at his request, if the circumstances are such as to repel the inference that compensation is to be made. When services are rendered from kindly motives and with charitable intentions the law will not imply a promise to compensate for them.

Cicotte vs. Church of St. Ann 27 N. W. 682; 60 Mich. 552.

**177** Church officials may maintain injunction proceedings to protect property controlled by the church.

Devenger vs. Geary 14 N. E. 903; 113 Ind. 106.

**178** The appointment of church trustees can be proven by parol evidence where it does not appear that the evidence of their appointment is in writing.

Gilbert vs. Boyd 25 Mo. 27.

**179** Ejectment is the proper method by which to determine the right of possession of church property as between parties claiming to be trustees of a church.

Rehearing 85 N. E. 976 denied. Yonthis vs. Kemp 86 N. E. 451.

**180** Certain trustees of a church purchased land for the use of the church, taking title in their own name without any agreement that it should be held as security for advances made by them for the church except a promise from the pastor. Held that such trustees would be decreed to convey the land to the church free from any trust, but without prejudice to their right to enforce payment of debts in the same manner as other *bona fide* creditors of the church.

Trinity Congregational Church of Pittsburgh vs. Thompson, 75 A. 855; 226 Pa. 582.

**181** If a majority of the trustees of a Roman Catholic Church united in diverting the temporalities of the corporation from the purposes to which they were devoted by its founders, a minority may maintain an action in the corporate name to enjoin such diversion.

Parish of the Immaculate Conception vs. Murphy 131 N. W. 946 (Nebr.).

**182** The trustees of a religious corporation organized under statute of 1899 and in conformity with the canons and discipline of the Roman Catholic Church had no authority to permit an excommunicated priest to occupy the corporation church edifice consecrated by its founders to religious worship according to the cannons and discipline of the church.

Parish of the Immaculate Conception vs. Murphy 131 N. W. 946 (Nebr.).

**183** An elder by expulsion from church membership is disqualified to hold the office as trustee.

Hundley vs. Collins 32 So. 575, 131 Ala. 234, 90. Am. St. Rep. 33.

**184** Where two out of three trustees have come together without notice to any one else and unite in executing a mortgage on a church property they are lawfully convened for that purpose.

A religious society cannot object that record proof of its proceedings is not produced to establish its liability when the failure to do so is because of its neglect to keep records.

Scott vs. Trustees of First Free Methodist Church 50 Mich. 528; 15 N. W. 891.

**185** A resolution by a Roman Catholic congregation vesting in the bishop of the diocese as such, all the property of the congregation to hold as trustee in accordance with the laws, rules and usages of the Roman Catholic Church, which laws are shown by the evidence to vest in bishop the absolute control of the church property will not be enforced by a court, since such enforcement would violate Act of April 26, 1855 (Pamph. Laws 330, Para. 7) providing that church property shall not be otherwise held than subject to the control and disposition of the lay members of the church, the trustees of the church property under such act holding simply the title and having no control whatever over the property.

When property has been bequeathed, devised or conveyed to any person or persons whomsoever for the use of any church congregation or religious worship, the person so acquiring the legal title is as to the property acquired but a dry trustee without any power of control or management.

Mazaika vs. Krauesuma, 81 A. 938; 233 Pa. 138.

**186** The vestrymen of a church have power to preserve order and remove disturbers from the meeting of a church.

Bekett vs. Lawrence, 7 Abb. N. Y. 403.

**187** A sexton conducting a funeral in a church building may lawfully remove therefrom an undertaker who is there in violation of the rules of the church.

Com. vs. Daughtery, 107 Mass. 243.

**188** The trustees of a religious society can alone represent it in making contract. But the order in which public worship shall be conducted and its general nature is to be determined by those who administer the church discipline.

Tartar vs. Gibbs 24 Md. 323.

**189** The trustees are mere agents to give effect to the will of a majority of the corporation.

Tulenski vs. Dambrowski, 29 Wis. 109; St. Patrick Rom. Catholic Church vs. Gavalon, 82 Ill. 170.

**190** An unincorporated religious society may sue on a contract made by it for the purpose of the society.

Phipps vs. Jones 20 Pa. 260; 5 Am. Dec. 708.

**191** A motion for an injunction to restrain persons claiming to be trustees, but who are not, from interfering in the management and control of the society property is properly brought in the corporate of the real trustees and not in the name of the state.

Trustees vs. Hoesali 13 Wis. 388.

**192** Where certain land was conveyed to trustees of a certain Lutheran Church following the Unaltered Augsburg Confession of Plymouth and to their successors or assigns, trustees of such church "to them and their own proper use and behoof," such church being congregational in government, having a mere optional affiliation with national association or synods, of such churches, the use of the property by a corporation subsequently organized from the old congregation following the old Lutheran belief and the old Unaltered Confession of Plymouth etc. was authorized.

Duesel vs. Proch 62 Atl. Rep. 152, 78 Con. 343.

**193** Injunction is the proper remedy for officers of a church entitled to management of its property to restrain interference therewith by members of the parish.

Richter vs. Kabat 72, N. W. 600; 114 Mich. 575; 4 Detroit Leg. No. 704, Ryan vs. Dunzilla 86 A. 1089, 289 Pa. 486.

**194** A bishop of the Roman Catholic Church who holds in his individual name all the church property in the diocese, and who, under the rule and tenets of the church has complete authority in regard to the erection of church edifices may maintain an action to restrain members of a congregation, whose church has been destroyed, from rebuilding on the land in violation of conditions which he has imposed.

Foley vs. Kleibush, 82 N. W. 223; 123 Mich. 416, 7 Detroit Leg. N. 5.

**195** In an action by the trustees of a church for the trespass on their church property in the removal of coal from beneath the surface of the land, evidence held to justify a finding that the title to the land in controversy was in the church. Penney vs. Central Coal and Coke Co. 138 Fed. 769, 71 C. C. A. 135.

**196** A legal title to the property, held by trustees of a church society vests on its incorporation in such corporation, it is a necessary party to the suit thereofter brought for the property. Dubs vs. Egli, 47 N. E. 766; 167 Ill. 514. People vs. Braucher 101 N. E. 944, 258 Ill. 604.

**197** Where a will directed the executors to erect and transfer a church to the Presbyterian Church provided a nucleus of a congregation could be found in the neighborhood, the church trustees and not the executors were the judge whether there were a sufficient number of persons to organize a church.

Appeal Fidelity Insurance Trust and Safe Deposit Co. 99 Pa. 443, 15 Phila. 17.

**198** Where a person conveys in fee to persons he names a lot and church edifice upon it for the use of a particular

unincorporated religious body, the trustees are not removable at the will of the *cestuis que* trustent and without cause shown. Bouden vs. Alexander 82 U. S. (15 Wall) 131; 21 L. Ed. 69.

**199** Trustees of a religious corporation can not under the statute take a trust for the sole benefit of members of the church as distinguished from the congregation nor for the benefit of one portion of the corporation; no trust being authorized by the statute except for the use and benefit of the whole society.

Robertson vs. Bullions 11 N. Y. (1 Kern) 243. Gram vs. Prussia Emigrated Evang. Luth. German Soc. 36 N. Y. 161.

**200** Whenever it is necessary or proper the trustees may take down the old edifice and rebuild on the same spot or elsewhere and may alter the form and shape of the building for the purpose of making it more convenient and spacious.

Voorhees vs. Presbyterian Church of Amsterdam, 8 Barb. 135.

**201** The archbishop of a church to which property is bequeathed can not mortgage it without authority from the church or the law.

Levasseur vs. Martin 11, La. An. 684.

**202** A canon of the Protestant Episcopal Church requiring the consent of the bishop and standing committee to removing or otherwise disposing of the church building of any parish in the diocese does not affect the right of the parish to dispose of its church building under the Massachusetts statute without such consent first obtained.

Sohier vs. Trinity Church 109 Mass. 1.

**203** The trustees of a religious society incorporated under the general act of New York have no power to alienate or dispose of the real estate of the church except such as is derived from the act to provide for the incorporation of religious societies.

Voorhees vs. Presbyterian Church of Amsterdam, 8 Barb. 135.

**204** Under act of 1813 providing that no board of trustees of a religious corporation shall be competent to transact any business unless at least a majority of the vestrymen be present, there must be at least a majority of the legal number of vestrymen present to constitute a legal meeting to authorize the execution of a mortgage. A majority of the number actually in office is insufficient.

Moore vs. Rector etc. of St. Thomas, 4 Abb. N. C. 51.

**205** The trustees of a religious corporation have no authority to distribute the property of the society among the individual members, nor can such power be conferred upon them by vote of a majority of the members and an order of a county court, and where it appears from the terms of the application that the sale was sought for the purpose of distributing the proceeds among the pewholders the court can not grant the application, and an order granting it is not within its jurisdiction and is inoperative.

Watson vs. Gates 18 N. Y. 395.

**206** The trustees of a German Reformed Church which was ecclesiastically connected with the Dutch Reformed Church attempted to dissolve the connection and employ German Lutheran pastors. Held that this was a breach of the trust by the trustees, and they were compelled to deliver up the church property to trustees duly elected by those entitled to elect trustees.

Gable vs. Miller 10 Page 627.

**207** Trustees of a religious society can not sue as such, except by the corporate name or title.

Bundy vs. Birdsell 29 Barb. 31.

**208** One of several trustees of a religious society can sue in behalf of the society, where it can not bring action because the acts complained of are those of other trustees.

Stokes vs. Phelp Mission 47 Hun. 570.

**209** In a suit against the trustees of a church to foreclose a mechanics lien for work done and materials furnished the complaint charged in effect that the services were ren-

dered under the order and at the request of the church assembled as a congregation with the knowledge and implied consent of the trustees, held good, as enough was shown to create an implied obligation upon the church as an organization and hence sufficient as against the trustees.

Gortemiller vs. Rosengarn 103 Ind. 414; 2 N. E. 829.

**210** A religious society owning pews in a meeting house may decide without interference from the pew owners what doctrines shall be preached in the house and who shall preach there. Trinitarian Congregational Society vs. Union Congregational Society 61 N. H. 384.

**211** The usages of a church or the law of its organization as a religious society, if they are to be considered in deciding legal controvercies, should be proved as facts; in the absence of the testimony it will be presumed that religious societies can not dissolve their connections with the principal organization without permission.

Visconsales vs. Ferriaris 27 Ill. (17 Peck 237).

**212** The constitution of a German Lutheran Reformed congregation of Sh. Paul's Church Columbia, declaring that the same connections which have existed in the congregation shall continue in all future time, does not connect it forever with the Evangelical Lutheran Synod of Ohio and adjacent states. Heckman vs. Meiss 16 Ohio 583.

**213** The Synod of the Norwegian Evangelical Lutheran Church of America is not a union of their several local congregations as one church with one governing head, but is rather a confederation of local self-governing churches, acting as an advisory body, and the withdrawal of a local church is not a violation of any rule of said church or any rule of the synod authorized by the church.

Fadness vs. Brwonberg 73 Wis. 257; 41 N. W. 84.

**214** The constitution of a religious society required adherence to the creed of the Evangelical Lutheran Church and the Augsburg Confession and that the church should be con-

nected with an orthodox synod, and recognized the Synod of Buffalo with which it became connected to be an orthodox synod. Held, that the determination of a majority of the congregation to change the synodical connection to another orthodox synod, and the confession of private members in anticipation of communion was not in violation of the constitution of the society or contrary to the Lutheran standards or established usages.

Schradi vs. Dornfeld 52 Minn. 465, 55 N. W. 49.

**215** The right of the majority of the corporators of a religious society to change their form of church government and pass from a congregational church to an organization in connection with the Presbyterian body is unquestionable.

Petty *et al.* vs. Tooker *et al.* 21 N. Y. 267; affirming, Parish of Belleport vs. Tooker 1859, 29 Barb. 256.

**216** A majority of a church congregation may direct and control in church matters consistently with the general and particular laws of the organism of the denomination to which it belongs, but not in violation of them.

Sutters vs. Trustees of First Dutch Reformed Church, 42 Pa. 503; 3 Grant, Cas. 336.

**217** When a charter of a religious congregation reserves the right in a majority to make a connection with any other Christian denomination when they shall think it to their advantage, they are not thereby empowered to dissolve such connection when made, and the right under the clause is exhausted by the act of union.

Sutter vs. Dutch Church 3 Grant Cas. 336; 42 Pa. 503.

**218** A religious corporation is not liable for the negligence of an employee where due care is used in his selection.

Haas vs. Missionary Society of Most Holy Redeemer Com. Pleas N. Y. 6 Mise Rep. 281; 26 N. Y. 868.

**219** Formal resolution was not essential to clothe the rector of a church who was president of the vestry with author-

ity to act as the vestry's agent in the preparation and acceptance of a plan for the constitution of a new church, but oral authority from a majority of the members of the vestry given in a session of that body was sufficient.

Cann vs. Rector of Church of Holy Redeemer, 85 S. W. 994; 111 Mo. App. 164; 98 S. W. 781; 121 Mo. 201.

**220** Trustees *de facto* of an unincorporated religious society may maintain an action against a trespasser for an injury to a meeting house of the society.

Green vs. Cady 9 Wend N. Y. 414.

**221** It is not essential to the validity of a contract between two factions of a church for a sale of a church property by one faction to the other that the contract be authorized or actually entered into by a majority of all the members, where open conferences were held, there was no concealment and no member was prevented from attending such conference or otherwise denied participation therein.

Bottom vs. Tinsley 134 S. W. 823.

**222** Under the rules and usages of the denomination of General Baptists, the exclusive power to admit and exclude is to the local congregation, and the associations have no power to review their action.

Iglehart vs. Rowe 47 S. W. 575, 20 Ky. Law Rep. 821.
Windley vs. Cliney 77 S. E. 226, 161 N. Car. 318.

**223** The refusal of a bishop of the Roman Catholic Church to recognize a society organized as a Roman Catholic Church society, does not prevent the society and its officers exercising the powers of a religious corporation conferred by law nor prohibit its members from maintaining its religious worship.

Canadian Religious Asso. vs. Parmenter 62 N. E. 740, 180 Mass. 415.

**224** A voluntary religious association owns its existence to the compact between the members composing it, and when a written constitution is adopted, this constitution is the em-

bodiment of the terms of the compact by virtue of which the association was formed and by which it is to be conducted.

Clark vs. Brown 108 S. W. 421.

**225** A building contract signed in the name of a church or religious denomination as a corporation by one subscribing himself "President of the Board of Trustees"—such church or religious denomination not being in fact a corporation, will be treated as a contract of such trustees, if labor is performed or material furnished thereunder by their authority and direction. Lunsford vs. Wren 63 S. E. 308; 64 W. Va. 458.

**226** The vestry of Trinity Church corporation are the governing body of such church and exercise all corporal power and are the sole managers of the corporation in respect to its temporalities.

Burke vs. Rector of Trinity Church 117 N. Y. S. 1130, affirmed 132 App. Div. 920.

**227** The office of trustee of a church is not one coupled with such an interest that the church body in its corporate capacity may not at a meeting of its members duly called and held, terminate the tenure of such office.

Munsell vs. Boyd 30 Ohio, Cr. Ct. Rep. 182.

**228** Under the Presbyterian form of government, viz.: that part of the sovereignty of the church which belongs to each particular church organization is lodged in the church session and not in the members at large.

Landrith vs. Hodgins 120 S. W. 783.

**229** The Presbyterian church consists of members and officers and its governmental power comes not from the people but from the Divine Founder of the Christian religion which power is vested in church officers organized into church courts acting in accord with a written constitution.

Rehearing 87 N. E. 1091 denied, Ramseyer vs. Hicks, 89 N. E. 597.

**230** Evidence in a proceeding to prevent the diversion of church property from its original use held to show that the Hungarian Evangelical Reformed congregation of Trenton is only subject to supervision of higher church authorities in ecclesiastical matters, and that it has full control over its property and can not be restrained from re-incorporating as the Magyar Reformed Church of Trenton and transferring its property to the latter church and loaning money and placing mortgage on said property.

Where a meeting of a church society is regularly called and conducted and the society determines at such meeting to terminate its connection with its former church body and affiliate with another church, there being nothing to prevent such action in its charter. Members of the society who do not agree with the majority lose any right they may possess to bring action to prevent the society to carry out its resolution by failing promptly to commence action, as laches will prevent them from receiving favorable consideration in a court of equity.

Vargo vs. Vajo 73 A. 644.

**231** Endowments made to a religious organization are not improperly affected by a union of such organization with another religious organization of the same faith, unless the endowments in question restrict or limit the grant so as to prohibit such union.

It is within the inherent power of one corporally organized church organization to unite with another of the same faith where such act of unition is not in specific disregard of charter powers, and will in the judgment of the governing body of the church seeking to form such union, tend to the general advancement, growth and prosperity of the united church. Fussell vs. Hail 134 Ill. App. 620, judgment affirmed 84 N. E. 42, 233 Ill. 73.

**232** Where a local church congregation is a member of a general organization having general rules for the government and conduct of all its adherent congregations and officers, the orders and judgments of the general organization

through the governing authorities, so far as they relate exclusively to church affairs and church government are binding on the local congregation and will not be re-examined by the court. Bonacum vs. Harrington 91 N. W. 886, 65 Nebr. 831; Pounder vs. Ash 63 N. W. 48, 44 Nebr. 672.

**233** A congregation which by unanimous vote of its members has withdrawn from the classis and synod with which it has been connected and becomes independent, retains the right of electing its own minister, elders and deacons, who under statute are the trustees of the congregation and the classis to which the congregation was previously subordinate has no power to remove the officers so elected.

Pullis vs. Isherman 58 A. 554; 71 N. J. Law 408.

**234** A duly incorporated church, owner of 130 shares in a building and loan association and which is entitled to vote such shares at an election for officers may do so by a proxy duly authorized by a board of trustees.

State vs. Rohiffs, 19 Atl. 1099.

**235** Where religious organizations have subordinate branches, the subordinate can not dissolve its connection with the principal without permission.

Schnorr's Appeal 67 Pa. St. 138; Lucas vs. Case 72 Ky. Bush 297. Ehrenfeld's Appeal 101 Pa. St. 186.

**236** Under Act of 1855 Pamph. Laws 328 confirming to every religious society, whether incorporated or not, absolute ownership in its property subject only to the condition that it shall not divert it from the uses and trusts to which it may have been lawfully dedicated; a Roman Catholic congregation owning real estate, the title to which was in the bishop as trustee for the congregation, could not be diverted thereof by the ecclesiastical rules and regulations of the church.

Krouezomas vs. Hoban, 70 A. 740; 221 Pa. 213. Ryan vs. Dunzilla 86 A. 1089, 239 Pa. 486.

**237** The property of a church is held in trust for the promulgation of the doctrines thereof and the title to the church property is in that part of the congregation which is

acting in harmony with its laws and principles and a majority can not ratify act violative of the adopted faith of the church.

Yanthis vs. Kemp 85 N. E. 976, rehearing denied 86 N. E. 451.

**238** A religious corporation may maintain an action against a railroad corporation for nuisance in disturbing the use of a church; and damages may be given not only for the depreciation of the value of the property, but for the discomfort and inconvenience caused to the congregation, and tending to destroy the use of the building for church purposes.

Baltimore and Potomac R. R. Co. vs. Fifth Baptist Church 108 U. S. 317.

The court by Field J. said, "Whatever prevents the comfortable use of the property for that purpose by the members of the corporation or those who, by its permission, unite with them in the church, is a disturbance and an annoyance as much so as if access to the church was impeded and rendered inconvenient and difficult, the purpose of the organization is thus thwarted. It is sufficient to maintain the action to show that the building of the plaintiffs was thus rendered less valuable for the purposes to which it was devoted. The liability of the defendants for the annoyance and discomfort caused is the same also, as that of individuals for a similar wrong. The doctrine which was formerly sometimes asserted, that an action will not lie against a corporation for a tort, is exploded.

The same rule in that respect now applies to a corporation as to an individual. They are equally responsible for injuries done in the course of their business by their servants. This is so well settled as not to require the citation of any authorities for the support."

**239** One or more members of a religious society may maintain an action in their own behalf for the benefit of all others who feel aggrieved, to enjoin diversion of the temporalities by the trustees.

Isham vs. Fullager 14 Abb. N. C. 363; Am. Dig. Cent. Ed. 42, 1614.

**240** In a suit by one part of a congregation against remainder for church edifice, mesne profits should not be allowed to the successful party plaintiff, there being no such claim in the bill and proof showing no pecuniary advantages to defendants from use of property pending suit.

Bouldin vs. Alexander 103 U. S. 330; 26 L. 308, Bk. X. U. S. Notes 57.

**241** In awarding certain church property to certain portion of divided congregation, it appeared that the pastor who held certain notes against the property had collected certain moneys for the congregation, held, that he should exhibit the notes that moneys collected might be credited thereon or in default, that decree be entered against him for the money.

Bouldin vs. Alexander 103 U. S. 330; 26 L. 308, Bk. X. U. S. Notes 57.

**242** In Congregational church, majority, if they adhere to organization and doctrine, represent the church.

Bouldin vs. Alexander 82 U. S. (15 Wallace) 131, 21 L. 69, Bk. VII U. S. Notes 858.

**243** Trustees can not be removed by church meeting without warning and acting without charges, without citation or trial and in direct contravention of the church rules.

Bouldin vs. Alexander, 82 U. S. (15 Wallace) 131.

**244** A regularly appointed committee of a voluntary religious society may sue for injunction to prevent disturbance of society's possession of land in its actual possession for religious purposes. Some of the members of a valuntary religious society having a common interest may sue on behalf of all for purposes common to themselves, and beneficial to all.

Beatty vs. Kurtz 27 U. S. (2 Pet.) 566; 7 L. 521, Bk. II. U. S. notes 878.

**245** Recognition of excluded portion of congregation by supreme ecclesiastical body of the church, held persuasive evidence that they were not seceeders.

Bouldin vs. Alexander 82 U. S. (15 Wallace) 131, 21, L. 69, Bk. XII U. S. notes 858.

**246** Change or alteration in a church name will not affect its identity. The question of identity is one of intention.

Trinity Church vs. Hall, 22 Conn. 125; Merwin vs. Camp 3 Conn. 35; Meyer vs. German Evang. etc. Church, 37 Minn. 241; 33 N. W. 786.

**247** In Pennsylvania notice of application to change name of a corporation, religious or other, must be given to the Auditor General before proceedings for the purpose can be had. *In re* First Presbyterian Church 107 Pa. St. 543. And it is not necessary that all the corporators should be heard on such application.

Watkins vs. Wilcox 4 Hun. N. Y. 220.

**248** Where all of the members and officers of a voluntary religious organization for years recognized themselves and the organization as belonging to the Evangelical Association of North America, submitted to its rules and discipline and were supported in part by the general conference, it is not within the power of a bare majority of the local organization to withdraw from the association and to deprive those who represent the regularly organized body of the church and were its regular appointees, from using the church property.

Fuchs vs. Meisel 71 N. W. 1117—113 Mich. 559; 4 Detroit Leg. N. 406.

**249** Where one borrows the funds of a church or becomes the surety for one who does so, there is no rule of public policy to prevent recovery of the money.

Kuhn vs. Adams 1 Ky. Law Rep. (abstract) 338.

**250** Where several religious denominations unite in building and repairing a church the W. denomination contributing the most, on the agreement that it was to be used by all without interference with each other, the W. denomination having the preference as to the time of use, the others do not have a mere license revocable by W. denomination.

Williams vs. Concord Congregational Church 44 A. 272, 193 Pa. St. 120.

**251** Under the rules of the Presbyterian Church the legal title to the church property is vested in the trustees of the congregation and the session controls the spiritual welfare of the churches, but has not control over the property thereof. Held, that, in the maintenance of public worship trustees of the congregation must respect the wishes of the session as to the use of the house of worship.

Dayton vs. Carter, 56, A. 30; 206, Pa. 491.

**252** A religious corporation in the absence of counter-acting statute or charter provisions may sell its church building to rebuild in another more convenient locality, notwithstanding the contributors to the fund from which the original church was built contended that it should stand in its present location. Phillips vs. Westminster Church 73 A. 1062; 225 Pa. 62.

**253** The fact that the plaintiffs sue as trustees and also as members of a church and in behalf of other members thereof, does not present a case of misjoinder, notwithstanding they are perhaps aserting rights in two capacities.

Munsel vs. Boyd 30 Ohio Cir. Ct. 182.

**254** The fact that members of a church have become dissatisfied with the pastor and disprove of the control into which the church has fallen and cease to attend services, does not afford ground without some rule or law of the church therefore, for expulsion without notice or opportunity to appear and to defend, and a vote of expulsion under such circumstances does not terminate membership.

Munsel vs. Boyd 30 O. Cir. Ct. R. 182.

**255** In an equitable proceeding to determine control of church property where a decree is rendered for plaintiff and defendants are not in possession it is error to assess damages against them in the nature of mesne profits.

Simons vs. Allison 26 S. E. 171, 119 N. C. 556.

**256** The remedy for those who are improperly excluded from their rights by the trustees of a church is by bill in chancery filed for that purpose.

Wade vs. Hancock 76 Va. 620.

**257** A pewholder's right is only a right to occupy his pew during public worship and is subject to the rights of the church society to have the meeting house where it will best accommodate the whole.

First Presbyterian Society of Antrim vs. Bass, 44 A. 485; 68 N. H. 333.

**258** Where the constitution and by-laws of a church corporation composed of members of two nationalities provides for alternate use of the church property for separate services by members of either nationality, members of one nationality are entitled to such use of the church property without application to the corporate board of trustees by any organized portion of the corporate stockholders or members.

Peterson vs. Christianson, 101 N. W. 40, 18 S. D. 470.

**259** The consent of trustees in possession of property is necessary to authorize its removal.

Alexander vs. Bowers, 79 S. W. 342 (Tex.).

**260** It is within the power of the Roman Catholic Church to give part of its general fund to a Catholic parish.

Enos vs. Harkins, 72 N. E. 253, 187 Mass. 40.

**261** The action of a religious society in removing its officers and electing new ones is invalid, when done at a meeting of the society the call for which did not contain a notice that such matter would be before it. The majority can not deny to the minority the use of the church for religious worship. Canadian Religious Association vs. Parmanter, 62 N. E. 740; 180, Mass. 415.

**262** Where the requirements of the form of government of the Presbyterian Church expressly direct that the pastor of a congregation shall always be the moderator of the session, a meeting of the session for the election of elders is invalid where the pastor was not present and no one was appointed by him to preside.

Dayton vs. Carter, 206, Pa. 491; 56 A. 30.

**263** Where a church organization authorizes the erection of a house of worship and appoint a building committee

to manage the business, said committee is the agent of the society in employing contractors and to pay for the work authorized, and allow and pay for any necessary extra work, to borrow money to pay the workmen or interest when necessary. Cornelius vs. Tully, 2 Ky. Law. Rep. 204.

**264** A grant of land to an incorporated religious society in trust for the support of the minister of the church is within the "pious uses" for which religious societies are empowered to purchase and hold real estate by act of 1813 Para. 4, and a deed to an incorporated church in trust to apply the rents and profits to the maintenance and support of the rector of the church for the time being is valid.

Tucker vs. St. Clement's Church, 5 N. Y. Super. Ct. (3 Sand.) 242.

**265** A religious corporation created under act of April 6, 1781 of the Pennsylvania Legislature can be a trustee for the heir at law of the testator who devised lands to it in trust for uses that were void.

Miller vs. Lerch Fed. case No. 9579 (Fed. 17, 329).

**266** The power to purchase and hold real estate for the use of the church or other pious uses conferred on incorporated religious societies by Act of 1813 Para. 4 must be restricted as to the pious uses for which the land may be held, to such uses as comprehended within the general objects for which the society is incorporated.

Tucker vs. St. Clement's Church, 5 N. Y. Super. Ct. (3 Sand.) 242.

**267** A religious society incorporated in another state can not by comity have better title to take property by devise than domestic corporation.

Levy vs. Levy 33 N. Y. 97.

**268** A bequest was made to an associated congregation, the interest from which was annually to be paid to the minister, and the majority of the congregation had the right to elect the minister. Held that the right of the majority would

be recognized by the courts unless the terms of the bequest were so explicit as to control this right.

Smith vs. Nelson, 18 Vt. 511 (Vt. 1846).

**269** The majority of a congregation may with reasonable restriction change the rules with regard to the management of its property.

Dunkle and Stout vs. Dries, 1 Woodw. Dec. 114 (Pa. 1863).

**270** A corporation for religious purposes may without violation of the constitution apply for and obtain an amendment of its charter authorizing it to use surplus funds for other purposes than those for which the charter was originally established.

Attorney Gen'l vs. Society for Relief of Elderly and Disabled Ministers, 10 Rich. Eq. 604 (S. C. 1859).

**271** The trustees of a Baptist Church have authority to convey real estate when authorized to do so by a vote of the church evidenced by an abstract from the minutes of the church.

City of Macon vs. Dasher, 90 Ga. 195, 16 S. E. 75 (Ga. 1892).

**272** A religious society sold its church edifice which had been removed from its foundation and placed on rollers and thus severed from the realty. Held that being personal property it could be sold by the trustees.

Beach vs. Allen 7 Hun. 441; (N. Y. 1876).

**273** The objection that a vote taken at a church meeting convened to pass the question of selling the church land was illegal for want of a proper register is of no force, where due notice of meeting has been given, the election fairly conducted, no lawful votes excluded, and no unlawful votes admitted.

*In re* First Presbyterian Society, 106 N. Y. 251, 12 N. E. 626.

**274** A religious society organized to build a church and maintain public worship therein may by a majority vote sell the premises in order to pay church debts.

Eggleston vs. Doolittle, 33 Conn. 396.

**275** A church incorporated as a branch of a particular denomination cannot without consent of all its members transfer property acquired for its benefit as such corporation to another denomination or branch of the same denomination holding different doctrine.

Park vs. Chaplin, 96 Ia. 55; 64 N. W. 674; 31 L. R. 141; 50 Am. St. Rep. 353 (Iowa 1895).

**276** A majority of the society could not change the purpose for which the property was purchased by adopting the different doctrine of a different church and procuring change of corporate name.

Becker vs. Decker 79 Cal. 365; 21 Pac. 764.

**277** The unanimous action of a church congregation in severing its connection with one and connecting itself with another sect, subjects the property to the control of the latter sect.

First Presbyterian Church of Louisville vs. Wilson, 77 Ky. (14 Bush) 252.

**278** A legacy to a church and society, "so long as they maintain the present essential doctrines and principles of faith and practice" which were unitarian, is forfeited by a change to a trinitarian system of faith and practice.

Inhabitants of Princeton vs. Adams, 64 Mass. (10 Cush.) 129 (Mass. 1852).

**279** Where a presbytery of the United Presbyterian Church is given authority to divide a congregation, neither of the two congregations thus formed can maintain ejectment against the other to recover property belonging to the original congregation but must sue in equity for division of the property.

Weddell vs. Collier, Com. Pt. 26, Pittsb. Leg. J. (N. S.) 309.

**280** The majority of a religious association not incorporated have supreme control and direction of the use of the church property as respects all matters not determined by the articles of association of the particular society, the organization and discipline of the denomination to which it belongs or the trust under which the property may have been con-

veyed; and the minority can not by procuring a charter of incorporation acquire the right of the management of the property in opposition to the will of the majority of those interested. Henry vs. Deitrich 84 Pa. 286.

**281** Where a religious society is a corporation aggregate and has a board of trustees to manage its affairs, such society can contract only through the aggregate body by vote, or through the board of trustees by vote, or through an agent authorized by vote of one body or the other.

Methodist Episcopal Church vs. Sherman, 36 Wis. 404 (1874).

**282** An unincorporated religious society may sue on a contract made with them in their associate capacity and for the legitimate purposes of their association though no persons are named as trustees or committee men.

Phips vs. Jones 20 Pa. (4 Harris) 260; 59 Am. Dec. 708 (Pa. 1853).

**283** A society incorporated for religious worship has no power to contract for a steamboat excursion to raise money for the church purposes and can not recover for expenses or loss of anticipated profits by reason of the breach of such a contract by the owner of the vessel the amount paid as hire for the vessel.

Harreman vs. First Bryon Baptist Church, 63 Ga. 186; 36 Am. Rep. 117.

**284** In an action against a religious corporation for money loaned that the corporation reported to the conference of which it was a member that it did not owe the debt is no defense. Hettie Warner vs. Emmanuel Church of the Evangelical Association 174, Pa. 466, 34 Atl. 188 (Pa. 1896).

**285** Suit on a non-negotiable note payable to a religious association by name must be brought in the name of the association if incorporated, otherwise by its members as partners. Jones vs. Watson 63 Ga. 679.

**286** Defendant signed a subscription agreeing to pay a sum to A., treasurer of an unincorporated religious society, towards the building of a church. Held, that the words "as Treasurer" in the subscription might be struck out as surplusage, and that A. might sue as an individual.

McDonal vs. Gray 11 Iowa, 508; 79 Am. Dec. 509 (1861).

**287** In an action against a church for a debt alleged to be contracted by its trustees, an answer that when the debt was contracted it had no elected board of trustees acting for it, and that no trustees had ever been elected or qualified, is bad since trustees of a church may be appointed as well as elected.

Presbyterian Church of Roanoke vs. Horton, 50 Indiana 223 (1875).

**288** In a suit to establish a will making a devise to a voluntary religious association afterwards incorporated brought by the church as a corporation, the trustees for and in behalf of the members may be substituted as plaintiffs by amendment under revised statute 1879, para. 3767, authorizing the addition or striking out the name of a party.

Lilley vs. Tolbein, 13 S. W. 1060 (affirmed) 103 Mo. 477; 15 S. W. 618, 23 Am. St. Rep. 887.

**289** Action on the case by the trustees of a religious society against a railroad company for disturbance during worship on the Sabbath by the noise made by defendants in the use of their road, will not lie by the trustees, but must be brought by the society worshipping in the church; they being the real party in interest.

Trustees of First Baptist Church vs. Utica & S. R. R. Co. 6 Barb. 313 (N. Y. 1846).

**290** Money subscribed for the rebuilding of a church edifice are subscribed for the benefit of the religious corporation and belong to it. A suit for the recovery of such moneys should be brought in the corporate name, the corporation being the real party interest.

Barns vs. Perine, 9 Barb. 202, affirmed 1854, 22 N. Y. (2 Kern) 18.

**291** Where money was raised by a committee of ladies for the purpose of building a church in a town and at their request the money was placed in the hands of defendants' testator for safe keeping, a person subsequently selected by the committee as their depository was entitled to sue the executor therefore as the committee's representative and agent.

Kendall vs. Calder 2 Possey Unrep. cases 732 (Texas 1881).

**292** A religious society, though unincorporated, may sue without joining all its members.

*In re* Maguire Estate 13 Phila. 244.

**293** A petition contained the following allegation: "The petition of the Roman Catholic congregation of St. Patrick's Church of the city of New Orleans by and through their pastor duly appointed and acting as such, the Reverend Edward J. Fallon of the city of New Orleans, respectfully represents" that etc. Held that there was not sufficient allegation of the authority of the pastor to institute suit in behalf of the congregation.

Roman Catholic congregation of St. Patrick's Church vs. Consumers Ice Co. 44 La. Am. 1021; 11 So. 682 (1892).

**294** A religious corporation organized under Act 1802 can only be sued in its corporate name and a suit against trustees individually designating them as trustees of the corporation omitting part of the corporate name, the designation superadded being merely descriptive personae.

Tartar vs. Gibbs, 24 Md. 323 (Md. 1865).

**295** In an action against a religious society, described in the writ "as a body corporate for certain purposes," if the defendant would deny its existence or organization as a corporation it must give notice of intention to do so in a specification of defense.

Townsend vs. First Free Will Baptist Church, 60 Mass. 6 Cush. 279.

**296** In an action against a religious society who have acted for many years as a corporation, plaintiff is not bound

to prove a formal acceptance by defendants of their incorporation and a legal organization under it, if not denied in the answer. Whitmore vs. Fourth Congregational Society Plymouth, 68 Mass. (2 Gray) 306; Mass.

**297** The identity of a religious corporation is not changed by re-incorporation under Revised Laws 1813, permitting a religious society to be reincorporated when dissolved by a non-user, but the question of identity is one of intention. First Society of Methodist Episcopal Church in Irving vs. Brownell 5 Hun. 464 N. Y. (N. Y. 1875).

**298** An action of trover or replevin may be maintained in the name of the parish for the recovery of the parish records. Inhabitants of the First Parish Sudbury vs. Stearns, 38 Mass. (21 Pick.) 148.

**299** A church organized in subordination to an incorporated church conference whose charter provided that property of church that should become extinct should vest in said conference and that a church should be considered extinct when there were not sufficient members left to fill the offices, voted to go into independency by a vote of all except two members. Subsequently the church was sold by the sheriff's sale, a balance of a fund remaining was claimed by conference and by the church. Held that the conference was entitled to the fund, the two members descending constituting the church and not being sufficient to fill the offices.

Appeal of Free Meth. Episc. Church of Scranton, 16 Wkly. Notes of Cases 245 (Pa. 1850).

**300** On dissolution of a religious corporation the surplus fund derived from a legacy should be disposed of in the manner the court believes to be in harmony with the will of the contributors to the fund, could they have foreseen the event. *In re* Union Village Orthodox Congregational Church 6 Abb. N. C. 398 (N. Y. 1878).

**301** An act of April 26th, 1853 P. L. 331 provides, "That no disposition of property hereafter made for any religious, charitable, literary or scientific use shall fail for want

of a trustee or by reason of the object being indefinite, uncertain or ceasing, but the court shall supply a trustee and execute the intent of the donor or testator, so far as the same can be ascertained and can be carried into effect consistently with laws or equity." A testator devised property "to the trustees of the First Presbyterian Church of Northern Liberties of Pittsburgh commonly called the Fourt Presbyterian Church of Pittsburgh for a religious use. Held that a conveyance of the property upon dissolution of the church in trust for the Presbytery of Pittsburgh could not be questioned by the testator's heirs.

Jones vs. Renshaw 130 Pa. 327, 18 Atl. 651 (Pa. 1889).

**302** The Supreme Court of the United States holds that; controversies in the civil courts concerning property rights of religious societies are generally to be decided by a reference to one or more of these propositions;

1st—Was the property or fund in question devoted by the express terms of the gift, grant or sale, by which it was acquired, to the support of any specific religious doctrine, or belief; or was it acquired for the general use of the society for religious purposes with no other limitations?

2d—Is the society which owned it of the strictly congregational or independent form of church government, owing no submission to any organization outside of the congregation?

3d—Or is it one of a number of such societies, united to form a more general body of churches, with ecclesiastical control in the general association over members and societies of which it is composed.

In the first class of cases the court will, when necessary to protect the trust to which the property has been devoted, inquire into the religious faith and practices of the parties claiming its use and control, and will see that it shall not be diverted from that trust.

If the property was acquired in the ordinary way of purchase or gift for the use of a religious society, the court

will inquire, who constitutes that society, or its legitimate successors, and award to them the use of the property.

In the case of the independent order of the congregation, this is to be determined by the majority of the society, or by such organization of the society as by its own rules constitutes its government.

In the class of cases in which property has been acquired in the same way by a society which constitutes a subordinate part of a general religious organization with established tribunals, these tribunals must decide all questions of faith, discipline, rule, custom, or ecclesiastical government.

In all cases where the right of property in the civil courts is dependent on the question of doctrine, discipline, ecclesiastical law, rule, or custom, or church government, and that has been decided by the highest tribunal within the organization, to which it has been carried, the civil court will accept that decision as conclusive and be governed by it in its application to the case before it.

The principle which induced a different rule in the English Courts, examined and regarded as inapplicable in the relation of church and state in this country and an examination of American cases found to sustain the principles as above stated.

Opinion by Justice Miller, Supreme Court U. S. in Watson vs. Jones 13 Wallace U. S. Rep. 679.

The English courts after a long controversy about the standing and use of church property of dissenters from the established church came finally to the conclusion: That church property conveyed for the use of a society for the purposes of religious worship, is a trust, which is to be enforced for the purposes of maintaining that religious worship for which the property was devoted, and in the event of schism (the deed making no provision for such case) its uses are to be enforced, not in behalf of a majority of the congregation, nor yet exclusively in behalf of the party adhering to the general

body, but in favor of that part of the society adhering to and maintaining the original principles upon which it was founded.

Attorney General vs. Pearson, 3, Marivale 400, cited in 13 Wallace, see pages 704 and 5.

The principles announced by Lord Elden in the case of Attorney General vs. Pearson reported in 3 Merivale and more fully set forth by the Supreme Court of the United States in the case of Watson vs. Jones reported in 13 Wallace were generally sustained by the judicial decisions in all the states in this country, as illustrated by the following citations, and many more confirming, reaffirming, illustrating and enlarging them.

**303** In Watson vs. Jones reported in 13 Wallace S. C. R. 679, the U. S. Supreme Court declares, see page 734 "The applicants in this case presented to us, have separated themselves wholly from the church organization to which they belonged, when the controversy commenced, they now deny its authority etc. They have first erected themselves into a new organization and have joined themselves to another totally different if not hostile to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants in their present possition have no right to the property or the use of it which is the subject of this suit etc.

Sustained in Day vs. Bolton 7 Hal. 12 N. J. Eq. 206.

**304** In Schnorr's Appeal 67 Pa. 138, the Supreme Court of Penna. holds—Property vested in a religious society, incorporated or not, is a charitable use, whether the donor be one or many. The society are trustees and can not divert the property from the use to which it was dedicated no more than other trustees. If they undertake to divert the fund equity will raise another trustee to administer it according to the intention of the donor or subscribers. When the founders have expressed their intentions, that particular doctrines shall be taught, or a particular form of worship and government sustained, those having the management of the institution can not alter the purposes for which it was founded.

A church organized and endowed as belonging to any particular sect or in subordination of any particular form of church government, can not break from that connection or government. In churches those who submit to the regular order of the church, though a minority, are the true congregation. The title to the property in a divided congregation is in that part which is in harmony with its own law; and the ecclesiastical law, usages etc., which were accepted before the dispute, are the standards to determine which is right. The guarantee of a religious freedom has nothing to do with the property.

To these points decided by a full bench in Schnorr's Appeal, Judge Williams added: I concur with my brethren in affirming the decree of the court below and dismissing the appeal, on the ground that the case comes strictly within the ruling of the court in Suttors *et al.* vs. Reformed Dutch Church, reported in 42 Pa. 503. That a majority of a church congregation may direct and control in church matters consistently with the particular and general laws.

**305** In church organizations those who adhere and submit to the regular order of the church local and general, though a minority, are the true congregation and corporation.

The majority of a congregation who had made use of the regular corporate forms to institute a regular organized resistance to the legitimate authority of their ecclesiastical superiors and had instituted an expelled minister of the denomination as their pastor, was not the true congregation.

Winebrenner vs. Colder, 43 Pa. 244.

**306** In Roshi's Appeal 69 Pa. 462, Judge Sharswood says, in the opinion of the Supreme Court, "That a church endowed in connection with an ecclesiastical organization or in subordination to it, can not unite with another organization or become independent. A religious society incorporated or not is but a trustee of a charity and a court of equity will prevent the diversion of the property held in trust.

**307** In Weekly Notes and Cases Vol. 4, 514, in Jones vs. Wadsworth, the court holds, "Where denominational connection is one of the conditions of the trust, the trust is violated by a severance of the denominational relations though the doctrinal belief continue identical.

The principles herein above cited are fully discussed and settled by C. J. Lowrie, in Suttors *et al.* vs. Trustees reported in 42 Pa. 503.

**308** Judge Burnside says in Appeal vs. Lutheran congregation, 6 Pa. 210, "I approve of the doctrine in the case of Attorney General vs. Pearson 3 Merrivale 400, "That it is the duty of the Court to decide in favor of those whether a minority or a majority of the congregation who are adhering to the doctrine professed by the congregation and the form of worship in practice as also in favor of the government of the church in operation with which it was connected at the time the trust was declared.

**309** Where the members of a congregation divide and one faction forms a new organization, the title to the property of the congregation will remain in that faction which attains to the tenets and doctrines originally taught by the congregation to whose use the property was originally dedicated.

Christian Church of Sandy Creek vs. Church of Christ of Sandy Creek, 76 N. E. Rep. 703—219 Ill. 503.

**310** Where a church has been endowed in connection with some ecclesiastical organization and form of church government, it can not unite with some other organization or become independent.

Dochkuts vs. Lithuanian Benef. Soc. 55 Atl. Rep. 779—206 Pa. 25.

**311** Where a local church congregation is a member of a general organization having general rules for the government and conduct of all its adherents, congregations and officers, the orders and judgments of the general organization through its governing authorities so far as they relate exclusively to church affairs and church government are binding

on the local congregation, and will not be re-examined by the court. Bonacus vs. Harrington 91 N. W. Rep. 886, 65 Neb. 831.

**312** Where a church society has a right under a deed of trust, to use a church building, and in so doing a majority of the society may not secede and form another church of a different denomination and exclude a minority from such use, and doing so they will be enjoined.

Cape vs. Plymouth Congr. Church 93, N. W. Rep. 449.

**313** When members of a church are expelled in pursuance of a fraudulent scheme to obtain control of the property of the church and to divert it from the original purpose, to the use and benefit of the perpetrators of the scheme, the expulsion is void and the members so expelled have the right to maintain an action for the protection of the church property. Hendrix vs. People's United Church of Spokane 84 Pac. Rep. 1123, 42 Wash. 336.

**314** Property acquired by a religious association connected with an ecclesiastical organization is generally charged with a trust for the use of the association, though the grantor imposed no such trust. Officers of a church organization organized to support the faith of, and to be connected with a synodical ecclesiastical organization take title to the property purchased by it, charged with a trust and they cannot divert to inconsistent uses against the protest of any member.

Where a religious association acquires by gift or purchase property for the maintenance of the faith of a recognized denomination every member thereof may resist the diversion of the property to other uses and the courts will enforce the trust to apply the same to the uses for which acquired. Marien vs. Evang. Creed congregation of Milwaukee, 113 N. W. Rep. 66, 132 Wis. 650; 121 N. W. 604.

**315** In case of a devise to a church which is claimed by two societies, it is the duty of the court to decide in favor of those, whether a majority or a minority of the congregation, who are adhering to the ecclesiastical government of the

church which was in operation at the time the trust was declared. Trustees vs. Sturgeon 9, Pa. 321.

**316** The church property belongs to that portion of the congregation which adheres to the old doctrine, those who secede therefrom, by that act part with their interest in the church property.

Fernstler vs. Seibert 114 Pa. 196.

**317** Adherence by a congregation to the doctrine and form of worship of the church to which the real estate is dedicated by a donor is the criterion of the right of such congregation to hold the same, and when the order of the church government is also prescribed in the grant or plainly deducible from it, church government connection is likewise essential. Texter vs. Menning, 33, Leg. Int. 321.

**318** Where a majority of the members of a church abandon tenets of the denomination to which the church was dedicated, they lose all right to the church property, though but a single member adhered to the original faith.

Ferraria vs. Vesconcellos, 31 Ill. 25.

**319** A congregation organized and holding its property as a constitutent part of any particular religious denomination or in subordination to its government, which without just cause severs such connection or government, forfeits its rights and property to those who maintain the original status. If such severance is alleged, the burden is upon the alleging to show that the others voluntarily, by their own act and without sufficient cause, renounced their connection with the general organization, and invaded the chartered rights of their fellows in the church property.

Appeal of McAuley 77 Pa. 397.

**320** As between opposing factions of a religious association, land acquired by the association before any schism arose, will be adjudged the property of that faction which abides by the doctrine, principles, and rules of church gov-

ernment which the united body professed when the property was acquired.

Latter Day Saints vs. Church of Christ, C. C. Fed. Rep. 60, page 937.

**321** In case of a division of a church congregation, the property belongs to that part acting in harmony with the laws of the church.

Presbyterian Church of Louisville vs. Wilson, 77 Ky. (14 Bush.) 252; Philomath College vs. Wyatt 27 Oreg.. 390, 37 Pac. 1022; McGinniss vs. Watson, 41 Pa. (5 Wright) 9; Bose vs. Christ, 193 Pa. 13; Nelson vs. Benson 69 Ill. 27; Ramsey vs. Hicks 87 N. E. 1091; Sarvers Appeal 81 Pa. 183; Skelton vs. Webster Brightley Nisi, Prius. p. 803; McKinney vs. Gregg, 96 Am. Dec. 360.

**322** For the purpose of enforcing the rights of the real congregation a pastor and a presiding elder of the district, the latter having by the discipline of the church the general superintendence of the church affairs in the district, may file a bill to prevent the diversion of the church property by the non-adhering portion of the congregation. (That same case decides) "When a church has withdrawn and separated itself from the authority of its lawful superior judicatory, it may not on bill filed on behalf of the judicatory question the title of the complainants in the bill derived from the judicatory, as to the regularity of the action of the judicatory."

Kline vs. Fegar, 5 North Car. 110.

**323** There is no rule either of ecclesiastical or civil law which permits the minority of a church to be deprived of its right of property by the mere will of the majority. On the contrary, the title to the church property of a divided congregation is that part though a minority which adheres to the ecclesiastical principles and usages of the denomination under which the church was constituted. And while the court will not attempt to pass upon the truth or falsity of any religious belief or practice, they will, where the right of property is involved, institute an inquiry as to which of the parties is the

adherent of the principles upon which the church was organized. Brooks vs. Yadon 14 Ky. Law. Rep. abstract, 863 Ky. Superior Ct. (1893).

The same case makes the rule "That copy from church book in possession of one party must be furnished to the other party."

**324** Trustees of a religious body to which land has been conveyed in trust are bound to hold and administer such land for the purposes for which it was conveyed to such body notwithstanding a division and their adherents to the seceders from the true body.

Trustees of a religious body appointed in accordance with resolutions of a faction seceding from the true body for an increase in their number have no title to the property conveyed to such religious body in trust.

Surviving trustees of a religious body are entitled to possession of land conveyed to such religious body, although they belong to seceding faction, but they are bound to hold it on the trust expressed in the conveyance and no other.

A court has power to intervene where property conveyed to a religious body should be administered by trustees holding the opinion of those for whose benefit the trust was intended. Brewster vs. Hendershot, 27 Ont. App. 232 Am. Dig. 1901 A. 3947; see Iter vs. Horne 23 Ont. App. 256.

**325** It is the right of any member of the corporation to prevent by injunction a breach of trust by a majority.
Wessnell vs. First Congr. Church, 14 O. 31; Am. Dig. Cent. Ed. 42, 1614.

**326** The act of the majority of an incorporated religious society in which the government of its affairs is vested in the congregation, in locating a new church sight in a village in which two-thirds of the members reside, and only three-fourths of a mile from the old site, is not an abuse of authority; and the minority not excluded from the benefits of the new church property, may not resort to equity for the parti-

tion of the church property. In general the factions of a church are not entitled to a partition of the property where it is lawfully applied to the purpose of the trust and none of the members are prevented from participation of its use and enjoyment.

Where the supreme government of an incorporated religious society in the management of its affairs is vested in the congregation the action of the majority of the congregation on any question affecting the management and direction of the temporal affairs and property, controls, if the authority is exercised in a regular and lawful manner.

Injunction is a proper remedy to restrain unlawful interference with the property of a religious society by a minority thereof. German Evang. Lutheran congregation vs. Deutsche etc. Gemeinde, 92 N. E. 868; 246 Ill. 328.

**327** Where land is conveyed to a trustee as a sight for a church to be under the control, care and direction of the "Cumberland Presbyterian" Church, such language was not sufficient to dedicate the property to use, in the propagation or support of any particular religious faith or mode of worship, but operated conveying the property to the congregation of the Cumberland Presbyterian Church at the place where it was located or its legitimate successor and therefore vested continuously in such congregation or its legitimate successor created in accordance with the rules and forms of government to which it owed allegiance.

Sanders vs. Baggerly 131 S. W. 49.

**328** A contract by a religious corporation authorizing the sale of real estate can be made only by the trustees of the corporation as a board and not as separate individuals.

Hart vs. Trustees Congregation Sheritt Israel, 49 N. Y. Supr. Ct. (17 Jones) 523.

**329** Religious incorporation law of New York State (Consal. Laws C. 57, para. 16) authorizing the incorporated governing body of a religious denomination to dissolve a church over which it has ecclesiastical jurisdiction and to

take possession of the property of the church and manage the same is within the power of the legislature to dissolve corporations and resulting trusts, and to provide for custody and control of the property dedicated in perpetuity to religious uses. Westminister Presbyterian Church West 23d St., vs. Trustees of Presbytery of New York, 127 N. Y. S. 836; 142 App. Dec. 855.

**330** Lots conveyed to a Roman Catholic Archbishop in trust for the congregation of a certain church or parish, could not be diverted from the purposes of the trust and must be applied according to the terms of the settlement and either in their original or some converted form devoted to the pious uses of the congregation whether the title continued in the original trustee or was conveyed by him to an incorporated society.

Klix vs. Polish Roman Catholic St. Stanislaus Parish, 118 S. W. 1171; 137 Mo. App. 347.

**331** Where property is conveyed to a religious society upon a specified trust a court of equity will enforce such trust and prevent the diversion of the trust and prevent the diversion of the property to other uses.

Pleasant Grove congregation of the Cumberland Presb. Church vs. Riley 94 N. E. 30; 248 Ill. 604.

**332** A bill by a member of a religious society alleging personal interest and fraudulent motives in the sale of church property by the trustees who under the statute fiduciary relation to the church, sets forth a breach of the trust against which complainant is entitled to relief.

Holmes vs. Wesley Methodist Episcopal Church at Belleville, 42 A. 582.

**333** Where land was conveyed to church officers and members of a church for the purpose of keeping and maintaining a church for worship and all privileges and appurtenances thereunto belonging etc. it was not a breach of such trust, for the officers of the church to lease a small portion

of the lot for a term of years for commercial purposes, the rent to apply to the use of the church.

Hays vs. Franklin 54 S. E. 432; 141 N. C. 599.

**334** Property dedicated to the use of the colored members of the Methodist Episcopal Church South, should be preserved to them by the conference of that church and applied in the manner intended by the grantors.

Mason vs. Hickman 4 Ky. Law, Rep. 313.

**335** While equity will not permit a perversion of trusts property given to a church for the support of some particular creed or dogma so long as there are agencies within the dedication to carry out uses intended, yet where property is conveyed to a church by a sale for a valuable consideration there is no trust for a specific form of worship to enforce, and the fact that the church subsequently changed its creed etc. is immaterial.

Brundage vs. Deardorf 92 Fed. 214; 34 C. C. A. 304.

**336** A trust raised by a conveyance to trustees for the use of the Evangelical Association of North America, subject to its discipline, is forfeited when they secede from that association and join another.

Garrett vs. Nace, 5 Pa. Supr. Ct. 475; 40 W. N. C. 576.

**337** The bishop of a diocese of the Roman Catholic Church to whom land had been conveyed in trust for a particular congregation could not execute a valid mortgage thereon to secure his own indebtedness.

O'Donnell vs. Holden Com. Pl. 21 Wkly. Law Bul. 254 (Ohio 1889).

**338** Where property was conveyed to an independent church society for the purpose of building a church of that society thereon, and for the use of said society, the majority of such society cannot devote the use of such property to a use inconsistent with the purposes of the corporation, or the teachings of another sect or denomination.

Frank vs. Mann 81 N. W. 1014; 106 Wis. 118.

**339** Neither the members of an incorporated church of the Presbyterian denomination nor the trustees thereof have any property right in the property of the corporation dedicated in perpetuity to religious uses, but the property notwithstanding the dissolution of the corporation in a manner described by the laws of the state and of the denomination will be administered for the same purpose. The court will presume that the donors to a church of a religious denomination contributed in the light of the law of the state and of the church, so that the funds donated are subject to such changes in the personnel of those who are to administer the same, as the laws of the state and of the denomination will be administered for the same purpose.

Westminster Presbyterian Church W. 23d St. vs. Trustees of Presbytery of New York, 127 N. Y. S. 836; 142 App. Div. 855.

**340** A town not divided into ecclesiastical societies acquired land for ecclesiastical purposes, and the land was used for such purposes. Held, that the land on division of the inhabitants of the town into societies belonged to the first society in the town.

Huntington vs. Carpenter, Kirby 45, Conn.

**341** Where the possession and management of the joint property of two religious corporations are vested by their charters and agreement in trustees who are directors of the corporations, the committee appointed by the members of the two congregations has no authority to erect a building on the joint property in opposition to the judgment of the trustees.

Beck vs. Dech 80 A. 1129; 231 Pa. 636.

**342** Where a general conference have disregarded the constitution of the church its acts cease to be legitimate, and the adherents of the constitution, however few, have the right of possession of the church's real estate.

Lemp vs. Raven 71 N. W. 627; 113 Mich. 375; 4 Detroit Leg. N. 322.

**343** A voluntary religious society which constitutes a subordinate part of a religious organization having ecclesias-

tical judicatories, tribunals authorized either expressly or impliedly to decide all questions of faith, discipline, rules or ecclesiastical government, is bound by the decisions of all such tribunals on all questions determined by them within their respective jurisdiction of each, and in cases where a right of property asserted in a civil court is dependent on a question of doctrine, discipline, ecclesiastical law, rule or custom and church government, and that question has been decided by the highest tribunal within the organization to which it has been regularly carried, the civil courts will accept that decision as conclusive and be governed by it.

Makee vs. Kime 58 S. E. 184—120 Ga. 1.

**344** A majority faction in a church which severs its connection with the denomination and organization by a declaration on its minutes, and which organizes in pursuance thereof along the line of a new church can not claim to be the church whose faith it has repudiated, and has no right to the property deeded in trust to the old organization.

Mt. Helen Baptist Church vs. Jones 30 South 714; 79 Miss. 488.

**345** As between opposing factions of a religious association, land acquired by the association before any schism arose will remain the property of that faction which abides by the doctrine, principles and rules of church government which the united body professed when the land was acquired.

True Dutch Reformed Church vs. Iserman, 45 Atl. 771; 64 N. J. Law 506.

**346** A mere resolution of an inferior ecclesiastical corporation to secede from the superior church body does not dissolve the former corporation in the absence of any action by the superior body. The connection of a religious society with the ecclesiastical authorities having rule over it is inferred from the circumstances of each case. No written constitution is necessary to bind the society to acknowledge such government. Denn ex Denn. Amer. Prim. Society of Paterson vs. Pilling 24 N. J. Law 653 (4 Zab.).

**347** A majority of a religious society can not change the purpose for which the property was acquired by adopting a change of doctrine and procuring a change of the corporate name of the society. Nor does it matter that many of the original members of the society who contributed to the parsonage fund favor the change proposed.

Baker vs. Denker, 79 Cal. 365; Wicks vs. Nedrow 28 Nebr. 386; 44 N. W. 457.

**348** A corporation with legal capacity to hold property may take and hold it in trust in the same way and to the same extent as private individuals may do. It is no objection to the enforcement of a trust in favor of a religious society or denomination that it is a voluntary organization and not incorporated. The trustee and agent of a church society may bring an action in behalf of themselves and all other members all having a like interest in the subject matter.

White *et al.* vs. Rice 70 N. W. 1024; 112 Mich. 403.

**349** A fund for the use of the poor of the church can not be applied in the payment of its debts.

*In re* Immanuel Presbyterian Church, 36 So. 408; 112 La. 348.

**350** A religious corporation that has purchased land may execute a mortgage for the purchase money, without an order from the chancelor.

South Baptist Society of City of Albany vs. Clapp, 18 Barb. 35 (N. Y. 1853).

**351** As under constitution and by-laws of the Baptist Church the trustees have no right to make any contracts affecting the real estate of the church, an agreement for the sale of the church property without the consent of the congregation is invalid.

Calvary Baptist Church vs. Dart, 47 S. E. 66; 68 S. C. 221.

**352** Where property is acquired for general use of a religious congregation which is itself part of a large and general organization of some religious denomination, then, as long

as any existing religious congregation can be ascertained to be the congregation or its regular or legitimate successor it is entitled to use the property.

Watson vs. Jones, 13 Wallace 714, 20 L. 666; Bk. VII U. S. Notes 771.

**353** An incorporated church may delegate to its vestry and wardens the power of transferring a note by endorsement. Colcock vs. Garvey, 1 Nott & McC. 231 (S. Car.).

**354** A board of foreign missions is not a church congregation or society formed for the purpose of religious worship within meaning of Illinois statute forbidding such societies from receiving by gift, devise or purchase more than ten acres of land.

Gilmore vs. Stone 120 U. S. 586, 594; 30 L. 734, Bk. XI notes 309.

**355** Where a schism leads to a separation into distinct bodies, if the principle of government is that majority rules, then numerical majority of members must control right to use property. If powers of control are vested in officers, those who adhere to acknowledged organism are entitled to the use of property. When persons separate themselves from a church organization, deny its authority, denounce its action and refuse to abide by its judgment they have no right to church property, or use of it. Withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in church abandoned.

Bouldin vs. Alexander 15 Wallace 131; 21 L. 69; XII U. S. Notes 858; Watson vs. Jones 13 Wallace 679, 714, L. 666; Bk. VII U. S. Notes 770 and 773.

**356** Where two congregations had built a church for their joint use in divine service, and one of them against the protest of the other and their articles of association introduced a Sabbath school into the church, equity has jurisdiction to restrain the latter congregation, as the conducting of

a Sabbath school is not "divine service" within the meaning of such agreement.

Appeal of Gass 73 Pa. 39; 13 Am. Rep. 726.

**357** Where property is dedicated to support peculiar tenets, *prima facia,* it is subject to the jurisdiction of the ecclesiastical courts and if the parties wish exemption from the jurisdiction, it is necessary for them to show clearly that such was the intention of the founders of the church.

Skilton vs. Webster, Brightly Nisi Prius 203 (Pa. 1850).

**358** Where subscriptions are secured for the erection of a church at a particular place as a memorial to a certain person, equity will enjoin the church society from tearing down such building and removing the material to a different place for use in a building to be erected by such society at the latter place. Cushman vs. Church of the Good Shepherd of Radner 162 Pa. 280; 29 Atl. 872, reversed 188 Pa. 438, 41 Atl. 616.

**359** Equity might not interfere to restrain the removal of a church building at the suit of the trustees where it plainly appears that the majority of the corporators were in favor of such removal though they had not expressed their will by any legal meeting of the society.

Kulinski vs. Dambrowski 29 Wis. 109 (1871).

**360** Prayer meetings and Sabbath school are divine services within the meaning of a contract between two incorporated religious societies who had jointly erected a church providing, that each association shall be allowed "divine services therein." Keiffer vs. Emerick 2 Leg. Op. 168 (Pa. 1872).

**361** Chattles given to a Baptist church which at the time of the gift is established at a place can not be carried off by a seceding majority.

McRoberts vs. Moudy 19 Miss. Appl. 26 (1885 Miss.).

**362** Seceders from a religious society are not entitled to share in the benefit in a fund held in trust for the society.

Attorney General vs. Town of Dublin, 38 N. H. 459 (1859 N. H.).

**363** Members who secede from a church organization or religious society thereby forfeit all right to any part of the property rights, or privileges of such church or society.

Hale vs. Everett 53 N. H. 9; 16 Am. Rep. 82 (1868).

**364** Seceders from a religious denomination can not retain the funds in their hands as trustees on the ground that they were members of the society when the funds accrued.

Methodist Church vs. Wood—Wright 12 Ohio.

**365** Seceders from the Methodist Episcopal Church who organize a separate conference and reject the office of bishop are not entitled to any part of the property of the society from which they secede.

Methodist Episcopal Church vs. Wood, 5 Ohio (5 Ham.) 283.

**366** Members who secede from a church organization thereby forfeit all rights to any part of the church property.

Wiswell vs. First Congregational Church 14 Ohio St. 31 (Ohio 1865).

**367** An organized church can not be divested of its property even though a majority of its members enter into a new organization which adopts the name of the original church, provided the old organization still exists.

Venable vs. Coffman, 2 W. V. 310 (W. V. 1867).

**368** Where it was the manifest intention of the grantor of land that it should be held and used for the benefit of the Dunkers at a certain place to afford them a house of worship, the proceeds of the house of worship, if sold, should be used to build or provide another place for that people and could not be divided between the church and dissenters.

Ex. party Shoup, 16 Wkl. Law Bul. 71 (Ohio 1878).

**369** Those having control of the property held in trust for the benefit of a religious society may be retained from applying the property or the use of it to the promotion of religious tenets and doctrines clearly opposed and adverse to the fundamental doctrines and faith of such sect or denomination at the time or immediately after such trust was erected.

Hale vs. Everett 53 N. H. 9; 16 Am. Rep. 82 (1868).

**370** Where trust funds given for the support of particular religious tenets are perverted by departure from such tenets, the court has power to remove trustees guilty of such perversion and order them to account.

Kniskern vs. Lutheran Churches of St. John and St. Peter, 1 Sandf. Ch. 439 (N. Y.).

**371** A court of equity has power upon the application of a portion of the corporators of a religious society to restrain the trustees of the society to apply the temporalities of the corporation to the support of a person as minister who has been deposed from the ministry by the proper ecclesiastical tribunal and who is still under sentence of deprivation.

Robertson vs. Bullion 9 Barb. 64; affirmed 1854; 11 N. Y. (1 Kern) 243; Isham vs. Fullager 14 Abb. N. C. 363.

**372** The leasing with reasonable restrictions of a German Reformed Church building by a vote of the church to another Protestant denomination is not inconsistent appropriation of the property, restrainable by a bill in equity by a minority. Dunkle and Stout vs. Dries 1 Woodward Dec. 114 (Pa. 1863).

**373** Code 1904, Act 23, Para. 302 provides that the trustees of a religious corporation may take and hold land by gift, bargain, sale or demise of any person, and use or lease, mortgage, sell and convey the same as they may deem most conducive to the welfare of their respective churches except that nothing contained therein shall authorize a sale of property held by the corporation under an instrument prohibiting it.

Held, that where the charter of a corporation organized under such act provided that it should not have power to raise money by mortgage of the church property, or bind the property, or subject the same to sale and removal of the restrictions by which it was devised to the church, power to sell the church property was denied only by imposition of a lien which would subject it to sale for debt, and did not deprive the trustees of power to sell the property for re-investment of the proceeds of another more desirable property to be used for church

purposes according to the same conditions attached to the property held.

Starr vs. Minister and Trustees of Starr Methodist Protestant Church in Baltimore City, 76 A. 595; 12 Md. 171.

**374** A petition by a Presbyterian church for the sale of its property should not be granted where the Presbytery intervenes, claiming right of possession and control because of expulsion of petitioners as a religious body from the Presbyterian church, and it appears that other actions involving such rights are pending.

*In re* Westminster Presbyterian Church West 23d St. New York, 121 N. Y. State 1039; 137 App. Div. 301.

**375** The manner in which a religious society as *cestui que* trust may appropriately exercise its powers of directing its trustees in the acquisition or sale of church property depends upon the established rules and regulations of the particular society. Page vs. Ashburg Methodist Episcopal Church 78 A. 246 (N. J.).

**376** Religious corporations possess the inherent power to convey their property; and though an application to the court for leave to make any sale of their real property is required by the statute, this does not restrict their power to the making sales for money, the court may sanction a conveyance for any proper purpose. Where the court assumes jurisdiction on the presentation of a petition of a religious corporation for the sale of its real estate the order granted thereon is conclusive on the petitioners.

Madison Avenue Baptist Church vs. Baptist Church in Oliver St. 11 Abb. Prac. N. S. 132.

**377** Churches of a religious denomination formed a union to provide a minister for the congregations and purchase land for a parsonage, each church contributing its share of the price. There was no trust expressed in the deed nor in any oral or written agreement. The union was not for any fixed

period. Held that the land purchased was not devoted to the maintenance of any particular doctrine in perpetuity, but the union existed only during the pleasure of the several churches, and a church withdrawing from the union could sue in partition when the rights of the several churches could be protected in the judgment under statute 1898, para. 3102 amended by laws of 1899, c. 336; Laws 1903, c. 280; Laws 1909, c. 283 providing for partition.

Munson vs. Bringe, 131 N. W. 904, 146 Wis. 393.

**378** A religious society unable to pay its current expenses can sell its property to another religious society subject to the payment of all its debts and liens. A deed from a religious society for adequate consideration and in persuance of an order from a court having jurisdiction is duly authorized and passes a good title.

Lynch vs. Peiffer 110 N. Y. 33, 17 N. E. 402, affirmed 38 Hun. N. Y. 63.

**379** Where on hearing of an application for an interlocutory injunction the controlling question was whether a majority of the members of a church had duly consented to a sale of the property to a particular class of persons, was properly rejected as irrelevent.

Nelson vs. Salomon, 37, S. E. 404, 112 Ga. 188.

**380** Where the records of a church show that a resolution authorizing the consolidation of a church with another adopted by a vote of six to five at a meeting held after due notice, in accordance with the rules of the church, and the resolution directed the trustees to make the conveyance of the church property and said conveyance was authorized by the quarterly conference of the church, a contention that the deed was executed by the trustees without authority was not well taken.

Jones vs. Sacramento Ave. Methodist Episcopal Church, 64, N. E. 1018; 198 Ill. 626.

**381** Where church property was deeded to three trustees two survivors may on the death of one of the trustees execute a valid conveyance of the property.

McCallister vs. Ross, 55 S. W. 1027; 155 Mo. 87.

**382** A deed of land has been given to one in trust for the sole use and benefit and behalf of an Evangelical Lutheran Church and School which might be thereafter established," with provision that on the establishment of said church and school said trustee, his heirs or assigns should give a deed to the church, its trustees or other legal representatives for the purpose of erecting thereon a house of worship for their use, the church to which the land is properly deeded has a marketable title.

St. Paul's Evangelical Lutheran Church vs. Gray, 47 Atl. 976; 196 Pa. 321.

**383** Changing the name of the "Proprietors of the Congregational meeting house" to the "Barre Congregational Society" and enlarging the powers so as to authorize it to hold and to maintain a parsonage in addition to a house of public worship, held to legalize the merger of the Barri Parsonage Society into the church corporation which in practice had existed for over 25 years.

Wheaton vs. Cutter 79 A. 1091 Vt.

**384** Though an Episcopal church corporation may have ceased to exist as a recognized ecclesiastical body and a dioceasan convention may have authorized the bishop to announce it extinct, this is not evidence of legal extinction, but such corporation still has legal existance, and while it so existed another corporation could not be formed with ownership of the temporalities of the original corporation (1911).

Ludlow vs. Rector of St. John's Church 130 N. Y. S. 679, 144 App. Div. 207; rehearing denied 130, N. Y. S. 1118; 145 App. Div. 940 reversing judgment 1910, 124 N. Y. S. 75.

**385** A religious society in the absence of prohibitory legislation has power to mortgage its personal property to secure its debts. Walrath vs. Campbell 28 Mich. 111 (Mich. 1873).

**386** Resolution adopted by a church corporation directing a sale of church property and an appropriation of the proceeds must be taken as a whole, and no sale will be al-

lowed unless the appropriation of the proceeds is legal. A sale of church property and an appropriation of the proceeds may be lawfully ordered at a regular annual meeting of the corporation without special notice, and for this purpose adjourned session of such meeting are but lawful prolongation of it. Wisswell vs. First Congregational Church 14 Ohio St. 31 (O. 1862).

**387** A deed from certain members of a church who had no authority to make the same purporting to convey to a railroad company a right of way over land belonging to the church does not authorize the company to take such land for the purpose designated in said deed where the transaction is afterwards repudiated by the church, and the consideration paid by the railway company is returned to it.

Macon & A. Railway Company vs. Riggs, 87 Ga. 158; 13 S. E. 312.

**388** When a religious corporation seeks to repudiate an unauthorized conveyance of real estate and recover possession it will be required to restore to the purchaser all he has paid upon faith upon the supposed title and of the enjoyment of the property. Madison Avenue Baptist Church vs. Oldvert, 73 N. Y. 82 (N. Y. 1878).

**389** Trustees of a religious society mortgaged its property to secure a loan from plaintiff and applied the proceeds to building a new house which was occupied by the society when completed. The society knew of the mortgage when the loan was made, but allowed the proceeds to be spent for its benefit without expressing any dissent to the plaintiff, and its treasurer made some payments of interest on the loan. Held that the society had ratified the acts of the trustees, and in an action to foreclose the mortgage could not claim that the trustees had no authority to make it.

Scott vs. First Free Methodist Church, 50 Mich. 528, 15 N. W. 891.

**390** A highway was layed out across a land owned by a church whose stewards had agreed in writing that said land

should remain open for a passage way in consideration of certain land conveyed to the church. This contract was made without a vote of the quarterly meeting conference as required by R. L. para. 1961. The church had acquiesced in the contract for more than twenty years and still retained the consideration for the same. Held, that the church was estopped from denying the validity of its agents' acts.

French Exr. vs. Town of Barre, 58 Vt. 567; 5 Atl. 568 (Vt. 1886).

**391** In case of a conveyance by an incorporated religious society pursuant to a degree of court the trustees' individual names should be inserted as grantors in the body of the deed with the addition of the words "trustees of" followed by the name of the society and the granting clause should witness that the parties of the first part as trustees of, for and by the society's direction for the agreed consideration have bargained etc.; the concluding part should show that "the parties as such trustees as aforesaid have hereunto set their hands and seals" or their official style should be added to their signatures, and the individuals should acknowledge the deed in their proper character as trustees.

Lombart vs. Chicago Sinai congregation, 64 Ill. 477 (1872).

**392** A sale by the vestry of an Episcopal Church of the church land with the assent of the minister under a decree of the Supreme Court of the U. S. conveyed a good title.

Mason vs. Manchester, 22 U. S. (9 Wheat) 445; 6 L. ed. 131, affirming 1821 Fed. case N. 9247 (2 Cranch 247) U. S. 1824.

**393** Where a mortgage of church property has been executed by the society's incorporated trustees with the usual form of a corporation mortgage signed by the president and attested by the secretary whose affidavit taken by a master in chancery sets forth, that the mortgage was executed pursuant to a resolution by the board of directors, there is a *prima facie* presumption that the mortgage was executed by authority of the board of trustees and the mortgagor seeking to re-

sist foreclosure has the burden of establishing the contrary. Under a bill to foreclose a mortgage against a religious society evidence, held to show the mortgage was the voluntary act of the incorporated trustees of the society.

Page vs. Ashbury Methodist Episc. Church 78 A. 246.

**394** Where a church congregation appointed a committee to determine upon the erection of a new building and the committee hired an architect, the congregation having accepted and approved the report of the committee is liable; their acceptance being a ratification of the hiring.

Crescent Hill Presbyterian Church vs. McDonald & Dodds 139, S. W. 849; 144 Ky. 655.

**395** Where the members of a church knew a trust deed had been given by the trustees of a church to secure a just debt and acquiesced therein for nine years, they were estopped to deny that the trustees were authorized to execute the deed as stated therein.

McCallister vs. Ross, 55 S. W. 1027; 155 Miss. 87.

**396** A deed of trust of property not executed under the corporate seal nor pursuant to a vote of a majority of the members of a church and on which it received money with which to erect a church building and the validity of which was afterwards recognized by it by bidding at a foreclosure sale thereunder is not void, so as to preclude assignees of the debt secured thereby from acquiring a lien on the church property. Fort vs. First Baptist Church of Paris, 55 S. W. 402 (Tex.).

**397** Where the trustees of a church purchase property and give a mortgage to secure the price, the congregation taking possession under the purchase ratify it and can not contest the validity of the mortgage on the ground of *extra vires*.

Rountree vs. Blount, 39 S. E. 631; 129 N. C. 25.

**398** A mortgage to secure a loan to become due when mortgagor church should cease to be connected with Presby-

terian General Assembly is not contrary to public policy on the ground, that it is a restraint on religious belief.

Board of Church Extension Fund of General Assembly vs. First Presbyterian Church, 53 Pac. 671; 19 Wash. 455.

**399** A mortgage by vestry men of a parish of the Protestant Episcopal Church of lands held by the bishop in trust for the vestrymen, wardens and congregation of that parish is void, in absence of proof that the vestrymen were authorized to bind the wardens and congregation.

Hill Estate Co. vs. Whittlesey, 57 Pac. 345; 21 Wash. 142.

**400** In an action by an architect against a bishop of the Roman Catholic Church trustee of the congregation for services rendered, an affidavit of defence is sufficient to prevent judgment which avers that the congregation in question was incorporated and that the clergyman mentioned in the statement of claim as having ordered the work had no authority to bind the defendants and had not been authorized by them to pledge the credit of the congregation in question.

McGlynn vs. Hoban, 42 Pa. Super. Ct. 478.

**401** A note and a mortgage given by the trustees of a church, being an indebtedness of the corporation, and not of the trustees as shown by resolution of the congregation authorizing the trustees to make the loan will be treated as such in a proceeding in equity to foreclose, equity looking to the substance rather than the form, although such note is executed in such a manner as to make the trustees in the same personally liable.

Zion's Church of Sterling vs. Minsch, 74 Ill. Appl. 115, affirmed (1890) 52 N. E. 858, 178 Ill. 225.

**402** A mortgage executed by the trustees of a church is not void for want of power to execute it.

Methodist Episcopal Church of Kendallville vs. Shulze, 61 Ind. 511.

**403** Members of a church aid society the constitution of which provides that the object of the society was to raise

money for the church, to dispose of it as the society may agree, who voluntarily withdraw from it, abandon their right to the property of the society.

Manning vs. Shoemaker, 7 Pa. Superior Ct. 375.

**404** Where officers and members of a church take an assignment of a mortgage debt, and at foreclosure thereof bid in the property in their own names, and are subsequently adjudged to hold the same in trust for the church subject to a lien in their favor for the amount paid by them they are entitled to interest and attorney's fees.

Fort vs. First Baptist Church of Paris, 55 S. W. 402.

**405** That a majority of the members of a religious corporation after the execution of obligations seceded therefrom does not affect the validity of its obligations.

Kattie Wanner vs. Emanuel's Church of the Evangelical Association 174 Pa. 466; 34 Atl. 188.

**406** A church edifice and the premises on which it stands may be subjected to the payment of debts due from the church for the salary of its pastor.

Lyons vs. Planter's Loan and Savings Bank, 86 Ga. 485; 12 S. E. 882; 12 L. R. A. 155.

**407** A corporation organized and chartered for the purpose of holding title to a college building and property erected and maintained by a religious denomination, is bound by contracts made by the synod of the denomination for the erection of the building, the synod being a shifting unincorporated body which however controls the denomination.

McLaughlin vs. Concordia College 20 Mo. App. 42 (Mo. 1885).

**408** When a church and society are an existing organization acting in a collective *quasi* corporate character, an agreement of compromise of a suit by a majority of members is binding upon the minority.

Hortons Errs vs. Baptist Church and Soc. in Chester, 34 Vt. 309 (Vt. 1861).

**409** The action of the Presbytery of New York dissolving a religious organization under its control, which action was affirmed by appellate courts of the Presbyterian Church will be accepted by the civil courts as final.

*In re* Westminister Presb. Church of West 23d St. vs. 121 N. Y. S. 1039; 137 App. Div. 301.

**410** Voluntary religious associations and churches organized to assist in the expression and dissemination of religious doctrine may, by their governing bodies prescribe rules and regulations for the government and discipline, and such rules and regulations will be obligatory on the members, congregations and officers of such general associations, and will be given effect by the civil courts.

First Presbyterian Church of Perry vs. Meyers, 50 Pac. 70; 5 Okla. 809; 38 L. R. A. 687.

**411** Where rules and regulations are made by the proper church functionaries and such laws are authorized by the laws of the order, they will be enforced by the courts when not in conflict with some law bearing on the subject contained in the rules.

Alexander vs. Bowers 79, S. W. 342 (Tex.).

**412** The connection of a religious society with the ecclesiastical authorities having rule over it is inferred from the circumstances of each case. No written constitution is necessary to bind the society to acknowledge such government.

Am. Prim. Society vs. Pilling, 24 N. J. Law (4 Zach.) 653.

**413** If the moderator of the particular synod participates as commissioner to the general synod in the completion of a union with another body of Christians under a common government, while the church to which he belongs still survives and he declares his intention of continuing his connection with it, he does not thereby terminate his church membership nor forfeit his office.

People vs. Farrington, 32 How. Prac. 294, N. Y.

**414** Under its legislative powers a synod may dissolve a presbytery and assigns its churches to some other presbytery. Under its judicial power it may for proper cause in due form depose a presbytery, dissolve churches and reorganize them. Appeal of McAuley 77 Pa. (27 P. F. Smith) 397.

**415** The synod has power to erect new presbyteries, but no power is given to them to dissolve a presbytery against its consent. Smith vs. Nelson, 18 Vt. 511.

**416** The general conference of the Methodist Episcopal Church having a right to change its organization and divides the church, has necessarily the further right to concede to the local churches the right to decide by majorities to which division of the church they shall belong.

Gibson vs. Armstrong, 46 Ky. (7 B. Mon.) 481.

**417** The division of the Methodist Episcopal Church, in 1844, the local societies in Kentucky passed to the Methodist Episcopal Church South except those bordering on the Ohio River which were permitted to determine the question whether they would go north or south, by a vote of the respective societies. Humphrey vs. Burnside, 67 Ky. (4 Bush.) 215.

**418** Under the constitution and discipline of the Methodist Protestant Church, the president of the conference has power during the recess of the conference to employ and station a minister without the consent of the church.

Robinson vs. Cochen, 46, N. Y. S. 55; 18 App. Div. 325.

**419** Under the form of government of the Presbyterian Church giving the presbytery power to visit particular churches and to order whatever pertains to their spiritual welfare, the presbytery on its own motion can direct an elder to cease to act without citing him to appear and to be heard on his own behalf. Dayton vs. Carter 56 A. 30; 206 Pa. 491.

**420** The General Assembly of the Presbyterian Church is not a corporation or a *quasi* corporation.

Commonwealth vs. Gree, 4 Wharton, 531.

**421** The Synod of Kentucky adhering to the General Assembly of the Presbyterian Church in the U. S. has the right to elect the trustees of Center College which was endowed on condition that the Synod of Kentucky of the Presbyterian Church composed of the clergy and elders in connection with said assembly should have the privilege of electing its trustees, and the courts can not refuse to enforce the right even though the general assembly may have disregarded the organic law of the church government as to compel many of the members to throw off their allegiance to it.

Kinkead vs. McKee, 72 Ky. (9 Bush.) 535.

**422** Under Cumberland Presbyterian constitution para. 43, authorizing the General Assembly to receive other ecclesiastical bodies conforming to the doctrine and order of the church, whether the confession of faith does conform to the Cumberland Presbyterian confession was a question of doctrine, faith and church government, the decision of which by the General Assembly was conclusive on the courts.

A local church, being a member of the church organization of the Cumberland Presbyterian Church, was bound by the orders and judgments of the church tribunals.

The property of a Presbyterian congregation can be held by it so long as it can be identified as an integral part of the general ecclesiastical government by which it is controlled.

Wallace vs. Hughes 115 S. W. 684.

**423** The division of the local Presbyterian church into two organizations by the act of the Presbytery according to the recognized ecclesiastical law of the Presbyterian Church, is binding upon the local church and upon the civil courts whenever material to pending litigation.

Wheelocks vs. First Presbyterian Church, 51 Pac. 841; 119 Cal. 477.

**424** Under a constitution of a church providing that no one who participated in the trial of, by which a local society expelled a member, shall sit as a member of the appellate tribunal, a member of a local society, who attended through-

out the trial but abstained from voting because she did not want to vote and a member who was present at the commencement thereof and merely held up his hand in response to a request by the expelled member, for all persons who did not vote, to indicate it are inelligible for the appellate tribunal.

The supreme tribunal of a religious denomination will be enjoined from expelling a member of a local congregation for alleged spiritual offenses when it appears that such tribunal has not been organized in conformity with an organic law of the church. Hatfield vs. DeLong 59 N. E. 483; 156 Ind. 207; 67 N. E. 551; 31 Ind. Apl. 210.

**425** In the case of Boyles vs. Roberts, 121, S. W. 805, 222 Mo. 613 the question of the union between the Cumberland Presbyterian Church with the Presbyterian Church in the United States, is fully discussed and decided adversely to the decisions in Ramsey vs. Hicks, 87 N. E. 1091; Wallace vs. Hughes 115 S. W. 684; Fussell vs. Hail 134 Ill. App. 620, affirmed 233 Ill. 73; 84 N. E. 42; 29 Ga. 1.

**426** Under the Presbyterian Church government the only acts of sovereignty retained by the members are the election of deacons and ruling elders when a particular church is organized, and when vacancies occur, and the election of a ruling elder as a representative of the particular church in the presbytery and synod, and all other powers of sovereign character are vested in the presbytery and General Assembly, and such powers when exercised are binding on all the members whether satisfactory to them or not.

Permanent Committee of Missions of the Pacific Synod of the Cumberland Presbyterian Church in the U. S. vs. Pacific Synod of the Presbyterian Church in the U. S. A. 106 Pac. 395.

**427** Courts will accept as final decisions of church judicatories on questions of discipline, faith or ecclesiastical law.

Bethany Congregational Church vs. Morse, 132 N. W. 14 Iowa.

**428** The decision of an ecclesiastical tribunal of the church as to a question of faith and church polity is conclu-

sive in a court of law as to an issue between contending factions of a congregation to determine their right as members.

Wehmer vs. Fokena, 78 N. W. 28; 57 Nebr. 510.

**429** The proceedings of ecclesiastical courts on matters within their jurisdiction will not be reviewed by the civil courts.

Irwin vs. Elliot 55 A. 859; 206 Pa. 152; Travers vs. Abbey 58, S. W. 247; 104 Tenn. 665; 51 L. A. R. 260.

**430** The general conference of a church appointed a commission to amend the church constitution and to revise the confession of faith, and directed that the report of such commission be submitted to the people of the church and if the results showed that two-thirds of the number of votes cast were for the approval of the proposed constitution and revision that the bishop publish such result in the official organs of the church, whereupon the constitution and confession of faith so adopted should become the organic law, and fundamental belief of the church. These directions were followed and the amended constitution and revised confession were declared adopted by the next general conference as having received the necessary two-thirds vote. Held, that those who adhered to the amended constitution and revised confession of faith constituted the church and those who refused to do so must be regarded as seceders.

Lamb vs. Cain 129 Ind. 486; 29 N. E. 13, 14 L. R. A. 518.

**431** Civil courts cannot determine questions of purely ecclesiastical nature and all such controversies should be settled as far as possible by the organization themselves, though when such questions become facts on which property rights depend, the civil courts may decide them.

Yanthis vs. Kemp 85 N. E. 976, rehearing denied, 86 N. E. 451.

**432** General Conference Methodist Episcopal Church was competent to make division of common property and particularly the book concern.

Smith vs. Sworn Stead 57 U. S. (16 How.) 288; 14 L. 942, Bk. V. U. S. Notes 372.

**433** Where a religious congregation is part of a large and general organization of some religious denomination and questions of discipline and faith, or ecclesiastical rule, custom or law have been decided by the highest of that church judicatory, legal tribunals must accept such declaration as binding on them in the application to the case before them.

Watson vs. Jones 13 Wallace 714; 20 L. 666; Bk. VII notes 771.

**434** The law knows no heresy and is committed to support no dogma, establishment of no sect. Decisions of tribunals created, for decisions of controverted questions of faith within voluntary religious organizations can not be reviewed in ordinary judicial tribunals.

Watson vs. Jones 13 Wallace 714; 20 L. 666; Bk VII notes 771.

**435** The Roman Catholic Church in the Philippine Islands is a legal personality, with capacity to hold property acquired by gift.

Santos vs. Holy Roman Catholic and Apostolic Church, 29 S. Ct. 338; 212 U. S. 463; 53 L. Ed.

**436** The General Assembly of the Cumberland Presbyterian Church under the constitution of that organization has authority to determine whether the teaching, doctrine and form of government of another organization is in accord with it, and if found so, to unite with such organization upon such terms and under such name as the judgment of the General Assembly shall dictate.

Makee vs. Kime 58 S. E., 184; 29 Ga. 1.

**437** Under the laws of the Presbyterian Church and the standing rules of the presbytery, the latter has the right to appoint a minister of such church as a stated supply to any vacant church, when accepting his services becomes obligated to pay him a just compensation.

Meyers vs. First Presbyterian Church of Perry Co. 69 Pac. 874; 11 Okla. 544.

**438** There is no limitation in point of time to the inquiry by a church court as to offenses against the discipline of the church.

Chase vs. Cheny 58 Ill. 509; 11 Am. Rep. 95.

**439** Where defendant is discharged by the examining committee of a church on the trial of a charge of immoral conduct, the discharge is not a bar to another examination of a trial conference of the church, the examination of the committee being merely preliminary to the trial.

Sampsale vs. Esher (Com. Pleas) 26 Weekly Law, Bu. 156; 11 Ohio Dec. 351.

**440** A decision of the lawfully constituted judicial, legislative, and administrative tribunal of a church denomination in regard to ecclesiastical matters is, unless shown to be clearly and manifestly repugnant to the established laws of the denomination, binding and conclusive on the civil courts.

Schweiker vs. Husser, 146 Ill. 399; 34 N. E. 1022.

**441** An ecclesiastical court has no power to make a decision determining property right which is binding on the civil courts. Watson vs. Garwin 54 Mo. 353.

**442** If a majority of a Presbyterian congregation refused to obey the rules of the presbytery over it, it would be in a state of rebellion against a lawfully constituted authority, and if expelled from the body of the church, and a minority are willing to submit to the presbytery's authority, such minority would be recognized by the civil authorities as the true congregation, with the right to use and to hold the church property. Property conveyed to trustees for the use of a church by its denominational name creates a trust for the promulgation of the tenets and doctrines of that denomination, so that on the denomination becoming divided the title is in that part which is in harmony with the denominational laws, usages, customs and principles.

Ramsey vs. Hicks 87 N. E. 1091.

**443** A part of a congregation refusing to conform to the church regulations will not be considered seceders so as

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to forfeit their civil rights, until the disciplinary body has taken every step required by their church organization to compel obedience.

Harmon vs. Dreker, Spear Ed. 87 (S. C. 184).

**444** When a general conference has disregarded the constitution of the church, its acts cease to be legitimate, and the adherents of the constitution, however few, have the right of possession of the church's real estate.

Bear vs. Heasley 98 Mich. 297; 57 N. W. 270; 24 L. R. A. 615; Mich. 1893; Lemp. vs. Taven 71 N. W. 627.

**445** Where a local church organization is a member of an association of congregations having general rules and governments, the decisions of the association are binding on the local organization so far as they relate to the church government.

Pounder vs. Ashe 44 Neb. 672; 63 N. W. 48.

**446** The title to the church property of a congregation that is divided is in that part of the congregation that is in harmony with its own laws, usages and customs as accepted by the body before the division took place and who adhere to the regular organization. The laws of an ecclesiastical body will be recognized and enforced, if not in conflict with the constitution or the laws of the state.

The decisions of the general conference established by the ecclesiastical body in its book of discipline as the supreme court of law in the church on the meaning and effect of the provisions of the book of dicipline, if not in violation of any law or usage of the church is binding on the ecclesiastical body and will be followed by any court of law.

Kreckor vs. Shirey 163 Pa. 534; 30 Atl. 440.

**447** The decision of the classis as to the validity of an election of officers is final, if it be not appealed from and full effect will be given to it by the supreme court.

Day vs. Bolton 12 N. J. Law (7 Hal.) 206.

**448** A deposed minister or an excommunicated member of a church cannot appeal to the courts for redress, but must

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abide the judgment of their own judicatories as final and conclusive. Where a member of a religious society is expelled and he deems himself aggrieved in his rights of property thereby, the court will examine the judgment of expulsion, to see if it has been regularly made on due notice, if not will disregard it and give proper relief.

Watson vs. Garvin 54 Mo. 353.

**449** The removal of a priest by the bishop cannot be interfered with by the court if the action of the bishop was within the laws and authority of the Catholic Church. If removed without notice, and unwarranted he was not limited in his means of redress to an appeal to a superior church tribunal but might resort to a bill in equity.

Stack vs. O'Hare 98 Pa. 213; 4 Leg. Gaz. (Pa.) 2.

**450** A by-law of a religious society which provides that no by-law prescribing a ritual or form of worship shall not be changed unless by a unanimous vote is unreasonable and inconsistent with the legal rights of the control of the affairs of the society existing in its membership and was in the majority of the members of the society to change the form of worship by vote at a regular meeting.

Saltman vs. Nelson 88 N. E. 3, 201 Mass. 534.

**451** The consistory proceeded to excommunicate or expell the relator from church membership without the consent of the congregation, his remedy was by an appeal to the higher tribunal of the church. The church judicatories consist of the consistory, the classis and the synod, and a member who thinks himself aggrieved by the decision of a lower tribunal has the right of appeal to a higher one, the decisions of an ecclesiastical court are final like those of any other judicial tribunal as they are the best judges of what constitutes an offense against the word of God and the discipline of the church, and one complaining of wrongful expulsion from church membership has no remedy by mandamus until such final adjudication.

German Reformed Church vs. The Commonwealth, ex. rel. Seibert, 3. Pa. (3 Barr.) 282.

**452** The action of the Methodist Episcopal Church in the United States at general conference in passing resolutions of a distinct organization in the slave holding states, if the annual conference of those states should deem the measure expedient, being a division and not a secession, neither division lost its interest in the common property.

Smith vs. Swornstead 57 U. S. (16 How.) 288; 14 L. ed. 642; reversing 1853 Fed. Cases No. 13112, 5 McLean, 369.

**453** The civil courts will control the action of churches or religious associations, where rights of property or individuals are concerned, but have no jurisdiction over doctrine or rules of faith of the society as such. Where, however, rights of property are dependent on adherence to a teaching of a particular religious doctrine courts will examine, what as a fact that doctrine is, and whether as a fact the persons interested adhere to or teach it.

Grimes Exrs. vs. Harmon 35 Ind. 198; 9 Amr. Rep. 690; Miller vs. Gable 2 Den. N. Y. 491, 10 Page N. Y. 627; Robertson vs. Bullious 11 N. Y. 243; Dieffendorf vs. Reformed Calvinist Church, 20 Johns N. Y. 12; German Reformed Church vs. Seibert, 3 Pa. 282; Ferraria vs. Vasconcellos 31 Ill. 25; Bowden vs. McLeod 1 Edw. Chanc. N. Y. 588; Hale vs. Everett 53 N. H. 9; 16, Am. Rep. 82; East Norway Lake Church vs. Holverson, 42 Minn. 503; Harrison vs. Hoyle 24 Ohio St. 254; Newman vs. Proctor 10 Bush. Ky. 318; Brunenmeyer vs. Buhre 32 Ill. 183; Kinkead vs. McKee 9, Bush. Ky. 535; Lutheran Evang.Church vs. Gristgan 34 Wis. 328; Henry vs. Dietrich 84 Pa. 286; Curd vs. Wallace 7 Dana Ky. 190; Happy vs. Morton 33 Ill. 398; Harmon vs. Dreher, Spear Eg. S. Car. 87; See Tyler's Ecclesiastical Law page 100, para. 217; In Bowden vs. McLeod, 1 Edw. Chanc. N. Y. 588, the court by McConn Vice Chancellor said;

"The property or temporalities are to be managed by persons constituting the consistory who are also trustees. Now over them and the property this court has jurisdiction. It

will interfere to prevent any abuse of the trust; can compel trustees, in other words the consistory, to discharge their trust fairly with respect to the property, has power to remove them if found necessary to preserve the temporalities and appropriate them to the original objects of the institution, in short, will see that the trust is faithfully performed and executed. It is to this end, the power, which is a common law power, and inherent in the court, is used. Besides this it has the power conferred by statute over corporations and their directors and managers; but those statutory powers do not extend to religious corporations, except in connection with the property and temporalities of a religious society whether incorporated or not and upon the principles just stated this court can not interfere.

It has nothing immediately to do with their spiritual concerns church government, discipline, faith, doctrines, mode of worship. These are matters to be left to the regulations of their own peculiar tribunals, and ecclesiastical judicatories of each church. Nor will the court interfere to restrain the free exercise of religion in any man according to the dictates of his own conscience. It disclaims all such power and authority. And yet it must be admitted, there are cases in which this court has power to inquire into tenets publicly and openly expressed in reference to the place in which they are promulgated. The task may be a difficult and painful one, but equity can do this whenever called upon (in connection with it) to execute and administer a trust. As for instance where a religious society is formed, a place of worship provided, and either by the will of the founder, the deed of trust through which the property is held, or by the charter of incorporation a particular doctrine is to be preached in the place, and the latter is to be devoted to such particular doctrine and service. In such a case it is not in the power of the trustees of the congregation to depart from what is thus declared to be the object of the foundation or original formation of the institution, and teach new doctrines, and set up a new form of worship there. At least this can not be done without the

consent of all the members of the church or congregation, because it would be an infraction of the will of the founders contrary to the spirit of the deed or act of incorporation and perversion of the original object and design of its institution. Upon the complaint of any party agrieved it may be the duty of this court to inquire into the doctrine taught, with a view to ascertain whether there is such a departure, and to restrain and to bring them back to the original principles of faith and doctrine if they continue to worship in that place.

**454** The courts will not interfere in matters of ecclesiastical arrangement unless property or civil rights are involved.

Parker vs. Rectorate of Trinity Church, 117 N. Y. S. 255; 63 Mise Rep. 43; order affirmed 117 N. Y. S. 1130, 132 App. Div. 930; Landrith vs. Hudgins 120 S. W. 783; Fusell vs. Hail 134 Ill. App. 620, judgment affirmed 1908, 84 N. E. 42, 233 Ill. 73; Yanthis vs. Kemp 85 N. E. 976, rehearing denied 86 N. E. 451; Dismukes vs. State, 58 So. 195 (Ala.)

**455** Civil courts in determining property rights will investigate and see that the church judicatory has acted, and if so whether it has acted within its constitutional grant of power. Civil courts will investigate ecclesiastical decrees where necessary to determine property rights.

Boyles vs. Roberts 121 S. W. 805, 222 Mo. 613.

**456** There is jurisdiction in a court of equity to determine the rights of the parties to an action for injunction whether the plaintiffs claim to be legally elected trustees of an incorporated church, and ask that defendants who also claim to be trustees, and one of them to be the pastor be restrained from interfering with their control of the church property or their use of it for religious worship.

Munsel vs. Boyd 30 Ohio Cir. Ct. Rep. 182.

**457** The determination of an ecclesiastical question by an ecclesiastical court is not binding on a civil court administering the law of the land in disposing of property rights, when a correct view of the nature, means, extent, and bearing

of such ecclesiastical question is necessary to be determined in order to settle such rights.

Landrith vs. Hodgins, 120 S. W. 783.

**458** Courts have no power over ordinary acts of a church discipline or pass on a controverted right of membership, but such considerations are attended to when they form the basis on which the civil rights and the right of property depend.

The jurisdiction of equity over voluntary religious associations and their property is maintained independently of the English statutes of ecclesiastical uses, and of any prerogative power of the court, on the ground of the trust nature of the property, the charitable uses for which it is designed and the inadequacy of the legal remedies, and hence equity has power on the application of an incorporated religious society to compel the performance of an agreement to convey land made to the trustees of the society before it was incorporated.

Gewin vs. Mt. Pilgrim Baptist Church 51 So. 947.

**459** Where civil courts have jurisdiction of the subject matter consisting of title to property claimed by two religious societies and they invoke the judgment of the courts, the courts must enter on the consideration of a controversy which involves the domain of ecclesiastical jurisprudence. A deed to the trustees of a congregation of a religious denomination is a civil contract and the civil courts must construe its terms and construe its local effect, though to do so it must deal with ecclesiastical questions.

Ramsey vs. Hicks 91 N. E. 344, rehearing denied, 92 N. E. 164.

**460** The civil courts will not enforce or interfere with the right to the use of church property by persons whose regular succession to the offices in a society has been established by the appropriate church tribunal, nor will they review its action as to the status of persons as members of the church organization, and who are subject to the laws of the body in that regard. But, spiritual courts can not usurp the

jurisdiction or impair the functions of the civil courts to protect and enforce property rights.

Trustees of Presbytery of New York vs. Westminister Presbyterian Church West 23d St. 122 N. Y. S. 309, 67 Misc. Rep. 317.

**461** The courts properly refused to determine the question who was the rightful leader of a church society, but left the settlement of that dispute to the church membership, for, unless property interests are involved, chancery will not interfere in church disputes.

Lewis vs. Volviva, 154 Ill. App. 48.

**462** In a suit to determine which of two contesting parties were elected trustees by the male members of the congregation of lawful age at a duly called meeting to determine who should hold the legal title to the church property, where the evidence is produced the court can not direct and hold an election in court to determine the real intent of the members of the congregation.

Mazaika vs. Krauzanas, 77 A. 1102; 229 Pa. 47.

**463** Though all questions of faith, doctrine and discipline belong exclusively to the church and its spiritual officers and the question of church membership is purely ecclesiastical, courts have power by injunction to restrain the expulsion of members when it is sought to be exercised as a mere pretext to deprive individuals of their membership so that their property rights will fall with the expulsion.

Holcombe vs. Leavitt, 124 N Y. S. 980.

**464** Where a civil right depends on an ecclesiastical matter, its determination is for the civil and not for the ecclesiastical courts, though such courts try only the civil rights, taking the ecclesiastical decisions out of which the right arises as it finds them.

Harris vs. Cosby, 55 So. 231, Ala; Mendelson vs. Gordon 156 S. W. 1152.

**465** Where there are two bodies each claiming to be the beneficiaries of a trust, a court of equity may require them

to interplead, without compelling either to establish its right at law. First Presbyterian Soc. vs. First Presbyterian Soc. 25, Ohio St. 128; Kisers Appeal 82 Pa. St. 428.

**466** A division of a church made in pursuance of proper authority carries with it, ordinarily, a division of the common church property of the organization.

Smith vs. Swoemstead, 16 How. 57 U. S. A. 288; Brook vs. Shaklett 13 Gratt, Va. 301.

**467** Where trustees holding church property are claimed to have been illegally elected by a withdrawing faction of the church and to be holding church property in perversion of the trust, equity has jurisdiction of a suit by trustees alleged to be the representatives of the church to enjoin them from exercising further authority over the property, the remedy by injunction being peculiarly adapted, and that by ejectment inadequate. Brundage vs. Deardorf, 92 Fed. 214; 34 C. C. A. 304.

**468** Civil courts should investigate the jurisdiction of ecclesiastical courts even though accepting proper decrees therefrom. Boyles vs. Roberts 121 S. W. 805, 222 Mo. 613.

And where beyond the constitutional provisions of the church judicatory will be declared void.

Ramsey vs. Hicks 89 N. E. 597.

**469** Where a church has been incorporated the regulations and customs of the communion to which it belongs regarding the disposition of secular business will be respected by the courts as far as possible, and if the mode of government in force in the denomination at large is not by congregations but by superior clerical personages, assemblies, synods, councils or consistories the authority of these will not be displaced if it can be upheld consistently with laws of sovereighty.

Where a schism occurs over a tenet of faith the decisions of church judicatories as to the original doctrines will

be accepted by the civil courts, when such judicatories exist and have authority to decide, the civil courts being concerned with points of faith only when they must ascertain in order to know where the property belongs.

Klix vs. Polish Roman Catholic St. Stanislaus Parish, 118 S. W. 1171, 137 Mo. App. 347.

**470** Religious organizations come before the courts as other voluntary associations for benevolent or charitable purposes, and their property and contract rights are equally under protection of law, and actions of their members subject to its restraints.

Watson vs. Jones, 13 Wallace 714, 20 L. 666, Bk. VII U. S. Notes 767.

**471** Civil courts have no power to revise or question ordinary acts of church discipline.

Civil courts may inquire whether expulsion of members was act of church or persons who were not the church or persons and who consequently had no power of excommunication.

Bouldin vs. Alexander 15 Wallace 139, 21 L. 69, XII U. S. Notes 859.

**472** A district court is without jurisdiction to take property of a religious corporation out of the hands of a regular board of trustees and place it in the hands of a receiver as an incidental proceeding in a suit by the state for the forfeiture of the corporation charter.

State vs. Immanuel Presb. Church of New Orleans 27 So. 806, 52 La. Ann. 1311.

**473** Civil courts assume no right or power to settle disputes upon religious or ecclesiastical subjects but follow the constructions which the church courts put upon such matters.

Fusell vs. Hail 134 Ill. App. 620, judgment affirmed 84 N. E. 42, 233 Ill. 73.

**474** The civil courts will not revise the decisions of churches or religious associations upon ecclesiastical matters,

but they may interfere when rights of property or civil rights are involved. Bird vs. St. Mark's Church of Waterloo, 62 Iowa; 567; 17 N. W. 747; Gibson vs. Armstrong 46 Ky. (7 B. Mon.) 481; Watson vs. Avery 65 Ky. (2 Bush.) 332; First Presb. Church at Wagoner vs. Cumberland Presb. Chas. Wagoner 126 Pac. 197; Perry vs. Wheeler, 75 Ky. (12 Bush.) 541; Watson vs. Ferris, 45 Mo. 183; Smith vs. Pedigo 145 Ind. 361, 33 N. E. 777; Pounder vs. Ash 44 Neb. 672, 63 N. W. 48; Robertson vs. Bullion 9 Barb. 64, affirmed 1854; 11 N. Y. (1 Term) 243; Connett vs. Protestant Reformed Dutch Church of New Prospect 54 N. Y. 551; Harrison vs. Hoyle 24 Ohio St. 254; Sampsell vs. Esher 11 Ohio Dec. 351, 26 Law Bul. 156; Skilton vs. Webster, Brightly N. P. 203; Gordon vs. Williams 3 Leg. Gaz. 113; Commonwealth vs. Green 4 Whart. 531; Harmon vs. Dreher, Speers Ed. 87.

**475** The proceedings of the Synod of the "Associated Church" as a court of the last resort are not to be held conclusive and absolute in this country when they come in question, whether directly or collaterally, in courts of law, but the regularity and effect of their proceedings may be examined and be determined in a court of justice upon the same principles which subject the proceedings either of inferior courts or voluntary associations to inquiry and adjudication.

There can not in this country be claimed for the decisions of a synod or of any ecclesiastical judicatory the same effect which is given to the decisions of ecclesiastical courts in England. Smith vs. Nelson, 18 Vt. 511.

**476** The Court of Chancery had no power to disfranchise a member of a religious society incorporated, by declaring that he did not possess the necessary qualifications; that power, if it exists at all being vested in another tribunal. Robertson vs. Bullion, 9 Barb. 64, affirmed 1854, 11 N. Y. (1 Kern) 243.

**477** The constitutional provision that "the free exercise and enjoyment of religious profession and worship without discrimination shall forever be granted" forbids judicial in-

terference with a church or a voluntary religious association unless civil or property rights are involved in the recovery.

Chase vs. Cheney, 56 Ill. 509; 11 Am. Rep. 95.

**478** The trustees, deacons, church wardens or other similar officers of an unincorporated church, if citizens of the United States are a corporation for the purpose of taking and holding in succession the real and personal estate given to their church. Bean vs. Christian Church 61 N. H. 260.

**479** A foreign corporation organized to hold in trust devises and grants of lands for a religious denomination and to receive by gift or devise property necessary to the transaction of corporate business etc., is a religious corporation incorporated for purely religious purposes to hold and administer property for the benefit of the denomination and is with the class of religious corporations prohibited by the constitution from the taking or holding title to real estate for any other purpose and is incapable of holding real estate under a devise for the use and benefit of a training school.

A domestic corporation is incorporated to establish and maintaining a training school for missionaries and other Christian workers under the auspices of a board of religious denomination etc. is a religious corporation within the constitutional proviso; that no religious corporation can be established, such as may be created under a general law, except for the purpose only of holding title to such real estate as may be used for church edifices, parsonages and cemeteries and can not take title to land devised to it.

Proctor vs. Board of Trustees of Methodist Episcopal Church South 123 S. W. 862; 225 Mo. 51.

**480** The constitutional and statutory provisions of West Virginia prohibiting the holding of land by any church or religious denomination were not intended to, and could not if they were so intended effect the right of an owner of land in that state to convey or devise it in trust for sale for the benefit of a foreign religious denomination.

West Virginia Pulb and Paper Company vs. Miller, 176 Fed. 284; 100 C. C. A. 176.

**481** Church trustees like other persons can under a deed as color of title acquire title by adverse possession, though this deed may be that of a married woman void for want of privy examination, and they will acquire such title as the deed purports to convey.

Deepwater Railway Co. vs. Honaker 66 S. E. 104; 66 W. Va. 136.

**482** A conveyance to trustees for the use of a religious denomination as a place of worship, is valid and not void for uncertainty, and as provided thereby will be construed to give the local congregation of such denomination control thereof.

Deepwater Railway Co. vs. Honaker 66 S. E. 104; 66 W. Va. 136.

**483** Where a majority of the trustees of a church convey the church lot and parsonage through sundry deeds to themselves in an attempt to free the title from an ecclesiastical trust and condition and refused to permit the duly authorized minister appointed under the rules and discipline of the denomination to hold religious services in the church and to reside in the parsonage, the chancery court had jurisdiction to final decree to require the trustees to desist from such action and to permit the duly authorized minister to hold services in the church and to reside in the parsonage.

Tebo vs. Hazel 74 A. 841.

**484** The conditions imposed by law under which a governing presbytery may declare a church extinct and take charge of its property is the law of the state and can not be superseded by church discipline.

Trustees of Presbytery of New York vs. Westminister Presbyterian Church of West 23d Street, 122 N. Y. S. 309.

**485** A devise of land to an executor to be held in trust until it can be sold, the proceeds of a sale or rent to go to a religious society is not void under Kentucky Statute para. 319, limiting the rights of religious societies to hold land.

Chambers vs. Higgins Exr. 49 S. W. 436; 20 Ky. Law Rep. 1425.

**486** It is no objection to the enforcement of a trust in favor of a religious society or denomination that it is only a voluntary organization and not incorporated.

White vs. Rice, 70 N. W. 1024; 112 Mich. 403; 4 Detroit Leg. N. 90.

**487** Under Comp. Statute C. 16, para. 42 providing that a religious society incorporated under its provisions has no power to acquire or hold real estate for any purpose other than that of promoting the object of its creation, a contract entered into by such corporation for the purchase of real estate as a matter of speculation merely, is *ultra vires* and void.

Thompson vs. West 82 N. W. 13; 59 Neb. 677; 49 L. R. A. 337.

**488** A church society collectively which is unincorporated is without capacity to acquire or hold title to property.

Stewart vs. White 30 So. 526; 128 Ala. 202; 55 L. R. A. 211.

**489** A legacy to an unincorporated religious society in Massachusetts for purposes within the object of its organization is valid under the laws of that commonwealth.

Congregational Unitarian Society of Bernardstown vs. Hale, 51 N. Y. S. 704; 29 App. Div. 396; 27 Civ. Proc. Rep. 303.

**490** That the bequests to a church are in form given in trust for some particular purpose does not make them invalid, where the purpose is within its corporate powers.

First Presbyterian Church of Waterford vs. McLallor, 54 N. Y. S. 740, 35 App. Div. 98.

**491** It is not necessary to the validity of a grant to an unincorporated religious society that it should be made to the society or to the deacons or trustees by name; if it be made to "the trustees" of a society so clearly as to distinguish it from all others, is a valid grant as "to the trustess of the United Society in Harward."

Lawrence vs. Fletcher, 49 Mass. (8 Metc.) 153.

**492** Property held for an unincorporated religious association must be held by trustees.

First Society of the Methodist Episcopal Church of Newark vs. Clark 3 N. W. 207; 41 Mich. 730.

**493** Land deeded to trustees of a church society will, on the society becoming incorporated and a church edifice being erected thereon and used for religious services be presumed to be in possession of the corporation though control is not assumed by any formal act or resolution.

Sanchez vs. Grace Methodist Episcopal Church 46 Pac. 2; 114 Cal. 295.

**494** A conveyance of a lot to a person named for the use of a Catholic congregation in the city of Aurora called "St. Mary's" to have and to hold said premises etc., for the use of said congregation and their assigns forever, conveys an indefeasable title in fee simple.

Schipper vs. St. Palais, 37 Ind. 505.

**495** Property may be dedicated by way of trust for the purposes of sustaining definite religious doctrines and it is the duty of courts to see that such property is not diverted from the trust to different uses.

Watson vs. Jones 13 Wallace 714; 20 L. 666, Bk. VII U. S. Notes 770.

**496** A deed of property in trust for the benefit of members of a certain church according to the rules and discipline which from time to time may be adopted by the general conference and permit duly appointed preachers to preach in the church to be erected thereon authorized a majority of the church members acting in accordance with the discipline of the church to sell the property and devote the proceeds towards building a larger church.

Fair vs. First M. E. Church of Bloomingdale, 42 A. 166; 57 N. J. Eq. 496.

**497** Property dedicated for the support of a particular church becomes a trust for the support of the particular doctrine taught by the church at the time of dedication and mem-

bers of the church, however small the minority, who adhere to such doctrine are entitled to the property as against those who departed therefrom.

Peace vs. First Christian Church of McGreagor, 48 S. W. 534; 20 Texas Civ. App. 85.

**498** A certain family allowed a cemetery and a church to be erected on a certain plat of their property in 1765. In 1841 the church was rebuilt and in 1872 the living members of the family declared they held the property in trust, the family having title to it all the while. Held, that the property was dedicated for church and cemetery purposes.

Ludlow vs. Rector etc. of St. John's Church, 124 N. Y. S. 75; 68 Misc. Rep. 400.

**499** The dedication of land *in pais* to a pious use does not transfer the fee but only the use, the fee remaining in the dedicator, his heirs or assigns. While the owner of a fee may be perpetually enjoined from interfering with the pious use to which he has dedicated the land he can not be deprived of the fee unless by ancient domain or due process of law. While there is an owner of the fee in existence land dedicated *in pais* to a pious use is not within the Revised Statute c. 16, para. 33, providing for sale by order of court of property dedicated to pious use, where such property has no proper legal custodian. Hamlin vs. property in Webster, 76 A. 163.

**500** Devise of land to a religious society which will increase the total amount of its lands beyond the amount allowed by statute to be held by such society, can not be attacked collaterally by a private individual.

Hanson vs. Little Sisters of the Poor of Baltimore, 79 Md. 334; 32 Atl. 1052, 32 L. R. A. 293 following Jones vs. Habersham, 107 U. S. 174, 2 Sup. Ct. 336, 27 L. Ed. 401.

**501** A testator gave to his wife for life or during widowhood such part of his real or personal property as she might choose to appropriate and use as she thought best, and then directed that all which she did not appropriate should be paid

over to the Missionary Society of the Methodist Episcopal Church incorporated by an act of the New York Legislature. Held that a portion of the land which testator directed to be sold after his wife's death did not pass absolutely to the wife and hence the proceeds of the sale thereof passed to the missionary society so that in this form the society, though a foreign corporation, was capable of taking the bequest.

Missionary Society of the Methodist Episcopal Church vs. Calverts Admn. 32 Gratt 357, Va.

**502** The Catholic Church at the period of the Texan Revolution had no real estate by perfect title, it only held and enjoyed the *usu fract* interest in such land as it possessed. This *usu-fract* interest was not dissolved or made void by the mere act of change of sovereignty, but until some affirmative act on the part of the new government, the tenant in actual possession susceptible of definite proof will have rights of a character to be protected by the courts.

Blair vs. Odin 3 Tex. 288 (Tex. 1848).

**503** Land was conveyed out of respect for the institution of Christianity and to the end that a certain church might have whereon to erect a place of worship with liberty to the church to allow other sects to worship therein or in other contingency to erect a school house thereon. Held, that the grant was upon condition subsequent, that a church should be erected thereon within a reasonable time and forever to be used as such; that the trustees of the church in whom the title was vested had no authority to sell without the consent of the grantor or his heirs, and the church; and that having sold it, and it having been thereafter used for a store, the grantor's heirs had a right to entry for conditions broken.

Scott vs. Stipe 12 Ind. 74 (Ind. 1859).

**504** When testator devises a house to a church for a parsonage on condition, that if it be suffered to remain one year unfit for the minister's family to live in, it shall go to other purposes, and the church with the consent of the general assembly sells the house and buys a lot better situated

for the parsonage, the church in order to retain the lot purchased must within one year from purchase build a suitable parsonage. *In re* Van Horne 18 R. I. 389; 28 Atl. 341 (R. I. 1893).

**505** A deed conveyed property simply to the trustees of Christ Church, Chicago, and there was no express declaration of trust either therein or separately. Held, that the property belonged to the society or congregation of Christ Church in its corporate capacity and not in trust for the benefit of the Protestant Episcopal Church as a religious denomination nor subject to the control of any ecclesiastical judicatory.

Calkins vs. Cheney 92 Ill. 463 (Ill. 1870).

**506** A deed conveying real estate to certain named individuals, not as trustees of any incorporated religious society nor to their survivors in office does not pass the title to parties who claim to be such successors.

Isaac vs. Emory 64 Md. 333, 1 Atl. 713 (Md. 1881).

**507** Land and a church edifice thereon was conveyed to the bishop of a church and his successors in office upon condition, that it shall be forever for the uses of "a named church." The grantor, although having title to the property by reason of reservations in the deeds to him, had only the right to use the basement hall in the building and certain pews; and the consideration paid him, consisting of contributions from friends of the church was adequate. Held, that his conveyance merely created a trust for the benefit of the parish, and was not a condition, breach of which would work a forfeiture. Neely vs. Hoskins 84 Me. 386; 24 Atl. 882 (Me. 1892).

**508** A deed of land to an organized and acting unincorporated religious society vests a legal title to the grantees as a body and does not create a tenacy in common among the individuals who compose the society.

Hamblett vs. Bennett 88 Mass. (6 Allen) 140, (Mass. 1863).

**509** A deed of land was made to A., B., C., Trustees of D. congregation, being a religious corporation; held that by

this deed the legal title was vested in A., B. and C. individually and not in the corporation.

Cairns vs. Hay 21 N. J. Law, (1 Zeb.) 174 (N. J. 1847).

**510** A conveyance of land as a gift to an Episcopal church and its successors, but not to its assigns forever with this express condition and limited, that it should not be sold or encumbered and should be kept solely for the purpose of worship and teaching according to the rites of that church, created a trust as to the use of the premises, but not a condition subsequent for the breach of which the grantor may enter.

Mills vs. Davison 54 N. J. Eq. 659; 35 Atl. 1072; 55 Am. St. Rep. 595; 35 L. R. A. 113 (N. J. 1896).

**511** A devise of land to the Nether Dutch Reformed Congregation within the city of New York, for the support and maintenance of their minister ordained according to the church order of the Netherland now or at present here in being or hereafter to be called, ordained or to come "excludes any congregation or minister from participating in the benefits of the devise, except that particular one which was described in and existed at the time of the devise.

Atty. Gen'l vs. Dutch Reformed Protestant Church 33 Barb. 303; affirmed 1867; 36 N. Y. 452.

**512** A gift of land made to A. and B. to the use of a certain religious society and such as may succeed them forever, holding the same principles, is not merely to the society then existing, but if that ceases to exist or to be of the same faith, the gifts then to any other society holding the same faith which may succeed them.

Potter vs. Thornton 7, R. I. 252.

**513** If by the express terms of a deed conveying land to a religious society for the use of a burial ground it was the intention of the parties to dedicate the property conveyed to the uses therein specially declared, neither they, their heirs, the *cestique* trust trustent nor the lot holders have any right to divert it from those uses, and the employment of covenants

of warranty in such deed will not enlarge the powers of the parties claiming thereunto.

Second Universalist Society vs. Dugan, 65 Md. 400; 5 Atl. 415 (Md. 1866).

**514** A deed to the Centenary Methodist Episcopal Church with warranty to "the said the trustees of the Centenary Methodist Episcopal Church," the latter being the correct corporate name passes the land named to the corporation, the misnomer not being material.

Centenary M. E. Church vs. Parker 43 N. J. Eq. (16 Stew.) 307; 12 Atl. 142 (N. J. 1887).

**515** By the statute of Pennsylvania religious societies have many of the capacities of a corporation, and a grant to the members of such society where the purpose is to promote the charity for which the society was organized is a grant to the society itself.

Brown vs. Lutheran Church 23 Pa. (11 Harris) 495 (Penna. 1854).

**516** A body of Germans in the city of Washington, consisting of Jews, Romanists, Lutherans and Calvinists worshiped together in 1832 and discovered on a assessment book of the city two lots of land standing in the name of "D. Reintzel for the Lutheran congregation" and the other "Reintzel for the Calvinist society," they took possession of the former lot, the Jews and Romanists having withdrawn, and built a church thereon. After a time they also took possession of the other lot. Afterwards a considerable number of the Calvinists withdrew and established the first Reformed Church in Washington. The society occupying the lots called itself "The Concordia Church" and was afterwards incorporated under the name of "The German Lutheran Evangelical Concordia Church." A controversy arose as to what society was entitled to the beneficial use of the second of the two lots. Held, that the first Reformed Church was entitled to it upon the ground principally that the Heidelberg confession was used by the Reformed Churches while the Augsburg confession was used by the Concordia Church and among the

Reformed Churches it must be considered in view of the local circumstances that a German society was intended.

Ebbinghouse vs. Killian 1 Makey 247 (D.C. 1881).

**517** The words "in trust nevertheless and upon condition always" to use the premises for public worship in a deed of land to a religious society, do not necessarily create a condition although they may import a trust.

Sohier vs. Trinity Church 109, Mass. 1 (Mass. 1871).

**518** A clause by the way of condition in a deed of gift to a church was as follows; "But said lot is never to be sold or to be used in any other way only for the use of a church for the benefit of said Protestant Church"; held, that as the trustees had no right to sell the lot; if they did so, though there was no clause of forfeiture in the deed, the grantor was entitled to the aid of the court of equity, to set aside the sale and divest the title of the purchaser.

Grissom vs. Hill 17 Ark. 483 (Ark. 1856).

**519** A deed to a religious society's committee and their successors for the use of the society is good.

Judd vs. Woodruff 2 Root, 298 (Conn. 1795).

**520** A bequest to a religious society on condition that within one year it shall erect a chapel, is on a condition subsequent and a condition that a judge of probate for good reason may extend the time is valid.

Appeal of Tapan 52 Conn. 412 (Conn. 1884).

**521** A condition in a conveyance of property to trustees of a certain denomination for "church purpose" that the church building shall be open "to all evangelical orders of Christians" when not in use by the said denomination is not repugnant to the grant. Held also that the term "evangelical orders of Christians" was sufficiently definite for the purpose of the grant. Tomlin vs. Blunt 31 Ill. App. 234 (Ill. 1889).

**522** A church accepting two lots from the owner in payment of his subscription, and building a church edifice thereon acquired an equitable unconditional title and the right to a full and legal title and to dispose of them, although, in-

stead of giving a deed he merely marked on the plot of the city addition made by him that the lots were donated for the use of the church.

Enos *et al.* vs. Chestnut *et al.* 88 Ill. 590 (Ill. 1878).

**523** A resolution of the general conference of the Methodist Episcopal Church South advising their trustees to permit persons joining the African M. E. Church to use their churches does not give the latter church any title to the property conveyed to the trustees for the use and benefit of the colored members of the former church.

Brown vs. Monroe 80 Ky. 443 (Ky. 1882).

**524** To bring a certain case within the provisions of Laws 1850 c. 122 authorizing religious corporations organized under it to take possession and control real and personal estate, the property must be given or devised to it, or to some person for its use.

Alexander Presbyterian Church vs. Presbyterian Church, 64 N. Y. 274 (N. Y. 1876).

**525** Where the title to an educational institution is vested in a corporation, the fact that a religious society is empowered to fill vacancies in the board of trustees of the corporation does not give the society any title legal or equitable to the property. Trustees of Union Baptist Association vs. Hunn, 7 Tex. Civ. App. 249; 26 S. W. 755 (Texas 1894).

**526** A religious corporation may obtain title to land by adverse possession thereof. Twenty year naked possession of land by a religious corporation gives to it an absolute title in fee simple. Harpending vs. Reformed Protestant Dutch Church, 41 U. S. (16 Pet.) 455; 10 L. Ed. 1029 (U. S. 1842).

**527** Where the minister of an ecclesiastical society coextensive with the town in 1710 took possession of a piece of land as a parsonage lot under a vote of the town passed 1708 and he and his successors in the ministry occupied it as such, having the exclusive uninterrupted possession until

1746, it was held that the society at this time had an uncontrovertible title to such lot.

Camp vs. Camp 5 Conn. 291; 13 Am. Dec. 60 (Conn. 1824).

**528** Where church property was held for the benefit of "The Baptist Society" and a church called the "Church of Christ" which was organized—the civil tribunal would not say, that it was not essentially a Baptist church or society, was in undisturbed possession for 14 years or more, it had a right to continue in the occupation unquestioned.

Curd vs. Wallace 37 Ky. (7 Dana) 190; 32 Am. Dec. 85.

**529** A parish may acquire a title by disseizin by an exclusive adverse occupation though the occupation is not authorized by any writing under seal—1830.

Inhabitants of Milton vs. First Congregational Parish in Milton 27 Mass. (10 Pick.) 447 (1839); Inhabitants of Second Precinct in Rehoboth vs. Catholic Congregational Church and Society of Rehoboth, 40 Mass. (23 Pick.) 139 note.

**530** Where a part of a religious corporation is set off from the parent organization, a resolution of the governing body of the parent society, purporting to transfer a portion of its real estate to the new organization is sufficient to lay foundation of an adverse possession.

Reformed Church of Gallupville vs. Schoolcraft, 65 N. Y. 134, reversing 1871, 5 Laws 246.

**531** Where a new society was incorporated and entered upon and took possession of lands formerly granted to a parish and remained in possession more than thirty years during which time the parish had no meeting and exercised no corporate powers, it was held that the parish was disseized and their right of entry tolled by long continued adverse possession.

Inhabitants of Second Precinct in Rehoboth vs. Carpenter, 40 Mass. (23 Pick) 139.

**532** The statute of limitations operates upon the plaintiff to deprive him of his remedy, and it applies though the disseizer is a corporation incapable of holding real estate.

Humbert vs. Trinity Church, 34 Wend 587 (N. Y. 1840).

**533** A church corporation can avail itself of the defense of forty years adverse possession as well as a natural person. People vs. Trinity, 22 N. Y. 44 (N. Y. 1860).

**534** Possession of a church by a religious society for the purpose of religious worship is an actual possession, as much as a residence on the premises.

Macon vs. Shepard, 21 Tenn. (2 Humph. 335) Tenn. 1840.

**535** Conceding that the title to all Episcopal Church lands devolved upon the state by the American Revolution, nevertheless Act. Va. 1776 C. 2 operated as a new grant thereof to the use of the Episcopal Church vesting an indefeasible and irrevocable title.

Terrett vs. Taylor, 13 U. S. (9 Cranch.) 43; 3 L. E. 650 (U. S. 1815).

**536** The particular church to which property is conveyed if no reference is made in the conveyance to its connection with any other body or society, retains the right, so long as it remains under the same organization to the beneficial use of said property.

Harper vs. Straws, 53 Ky. (14 B. Mon.) 48 (Ky. 1853).

**537** Under the statute the legal title and possession of a church are in the corporation or the trustees thereof, not in the pew holders as joint tenants or tenants in common.

Cooper vs. Trustees of First Presb. Church 32 Barb. 222 (N. Y. 1860).

**538** The purchase and appropriation of property as the house of the minister of a congregation according to the rules and discipline of the religious denomination with which the congregation was connected, was a dedication of the prop-

erty to the use of those who then composed that organized congregation or might thereafter compose it.

McKinney vs. Griggs, 82 Ky. (5 Bush.) 401; 96 Am. Dec. 360 (Ky 1869).

**539** As neither the constitution nor statutes of this state regulate the remedies, the titles or the income of property dedicated to pious uses, all donations to it, to ministers, churches or parishes, or towns must be governed by the principles of the common law.

Union Baptist Society vs. Town of Candia, 2 N. H. 20 (1820); Baptist Society in Wilton vs. Town of Wilton, 2 N. H. 508.

**540** An unincorporated association known as Guild was formed to assist in the work of a parish, the rector being *ex-officio* its president. The consent of the vestry was obtained by it for erecting an addition to the church on the land owned by it, for the use of the guild and the parish. The money for its erection was obtained through the efforts of the guild by contributions, both direct and indirect and was contributed largely by members of the church. Held, that the addition was the property of the church and that the guild acquired no estate therein by reason of its participation, by raising of a fund to build it.

Read vs. Church of St. Ambrose, 137 Pa. 320; 20 Atl. 1002; 27 Weekly notes and cases 203; L. R. A. 727 (Pa. 1891).

**541** The property of a religious society incorporated under the general statute vests in and is held by the corporation.

People vs. Fulton 11 N. Y. (1 Kern) 94 (N. Y. 1854).

**542** Land was conveyed to certain trustees in 1813 to a house of worship for the use of the members of the Methodist Episcopal Church in the United States. Subsequently under a general act for the incorporation of religious societies plaintiff Methodist Episcopal Church was incorporated and in 1859 the sole surviving trustee conveyed the land to

the plaintiff which used it for church purposes for many years. Held, that the plaintiff had a good title.

Upper Nyack Methodist Episcopal Church vs. Bennett, 73 Hun. 585; 26 N. Y. Supp. 341 (N. Y. 1893).

**543** Where the deed to the original trustees ran in the name of the trustees of the African Methodist Church and it is shown that they were in fact members of the African Methodist Episcopal Zion's Church, that there was no such organization as the African Methodist Church, and that the property conveyed by the deed had been known and recognized for 28 years by the bishop, conference and congregation as the African Methodist Episcopal Zion's Church—it will be presumed that the grant was so intended.

Simmon vs. Allison 118 N. C. 763, 24 S. E. 716 (N. C. 1896).

**544** It is no objection to a deed conveying property in trust for the use of a local religious society that it sanctions the appointment of a minister thereof by other modes than by election by the congregation, it being a regulation of the Methodist Episcopal Church, that ministers shall be appointed by the conference.

Brook vs. Shackelett 13 Gratt. 301 Va.

**545** A decree of Court incorporating a religious body passes to the corporation the title to the land conveyed to such body before its incorporation where such court has jurisdiction of the subject matter and parties and can not be collaterally attacked.

Keith vs. Perry Coal Co. vs. Bingham, 97 Mo. 196; 10 S. W. 32 (Mo. 1888).

**546** Land was conveyed in trust for a religious society not then fully organized with covenant by the grantees to convey the same to such society when created. The society afterwards became incorporated and received a deed from the trustees executed to the trustees of the society in their cor-

porate name. Held, that the society took the land free of any trust. Centenary Methodist Episcopal Church vs. Parker, 43 N. J. Eq. (16 Sten.) 307; 12 Atl. 142 (N. J. 1887).

**547** A deed to archbishop for the benefit of the church and to "his successors and assigns forever" vests a fee simple title in such bishop in trust for the church, and in absence of any conditions subsequent expressed or implied.

Alcott vs. Gabert 86 Tex. 121; 23 S. W. 985, affirming Gabert vs. Alcott (Civi. App. 1893) 22 S. W. 286; Mannix vs. Purrell 46 Ohio St. 102, 19, N. E. 572.

**548** Under the act of 1813 permitting real estate and personal property to be held in trust for unincorporated religious societies, the deed need not to show that the property is held in trust, nor does the statute require that there should be written evidence of the fact, but it may be proved otherwise.

Church of the Redemption vs. Grace Church 6 Hun. 166 (N. Y. 1875).

**549** The language of a conveyance giving property to a church if it is clear and unequivable is conclusive as to the purpose to which such property was intended to be devoted. If, however, the language is indefinite, extrensic evidence such as the faith of the donor and the circumstances under which the gift was made is admissible in ascertaining the intention.

Walker vs. Cuthbert & Stanley, 10 Ala. 213 (Ala. 1846); The First Constitutional Presbyterian Church vs. Congregational Society, 23 Iowa 567, (1868).

**550** Rev. Law. 1801 providing for the incorporation of religious societies transferred to the ministers, elders and deacons of every incorporated Reformed Dutch Church then in existence the legal title to all property held in trust for said church. Reformed Protestant Dutch Church vs. Mott 7 page 77; 32 Am. Dec. 613 (N. Y. 1838).

**551** Where a purchase has been made on behalf of an unincorporated religious association and paid for by the members and the deed taken by one of them, the trustees ap-

pointed on a subsequent incorporation of the church have a right to call for a conveyance.

Trustees of the South Baptist Church vs. Yates, 1 Hoff. Ch. 142; N. Y. (1839); Robertson vs. Bullions 9. Barb. 64, affirmed, 1854, 11 N. Y. (1 Kern.) 243, N. Y. 1850; Beatty vs. Henry, 30 Leg. Int. 140 (Pa. 1873); Miller vs. Chittenden, 4 Iowa (4 Clark 252); Fourth Universalist Parish vs. Wensby, 5 Wkly. Notes and Cases 273 (Pa. 1878).

**552** Where donors agreed with inhabitants of a town that they would give land for church and cemetery for the use of two congregations if the two congregations erect a house of worship and open a cemetery, on erection of the church and the opening of the cemetery at the expense of the congregations the donors stood seized of the premises as trustees for the use of the two congregations.

Beaver vs. Filson 8 Pa. (8 Barr. 327) Pa. 1848.

**553** The fact that a religious society, to whose trustees land is conveyed for religious purposes had not been incorporated when the deed was delivered does not invalidate the trust; Rev. Statute 1849 provides that express trusts may be created for the beneficial interest of any person or persons when such trust is fully expressed. Held, that a conveyance to the trustees of an unincorporated religious society for the use of its members sufficiently designated the beneficiaries.

Fadness vs. Brownborg, 73 Wis. 257; 41 N. W. 84; (Wis. 1889).

**554** Where a Catholic priest took title to certain premises, used for a church school in his own name and there was no declaration of trust or evidence tending to show the existence of a trust in him on behalf of the church, no such trust should be declared as against a person claiming under a mortgage from the priest, though the money with which the priest purchased the premises was contributed by members of the church. Moore vs. Gross, 54 Iowa, 248, 6 N. W. 290 (Iowa 1880).

**555** A deed of land to a Roman Catholic bishop and his heirs and assigns forever "in trust for the Catholic community for the purpose of a free burial ground" gives him an estate in fee, and he may maintain a writ of entry for the land against the *cestui que trustant.*

Fitzpatrick vs. Fitzgerald 79 Mass. (13 Gray) 400 (Mass. 1859).

**556** Where property has been given in trust for a church, any incorporated congregation, being one of which the church consists may come into a court of equity and enforce the execution of the trust.

Trustees of Associate Reformed Church vs. Trustees of Theological Seminary Princeton, 4 N. J. Eq. (3 H. W. Green) 77 (N. J. 1837).

**557** Where land is conveyed to A., B., C. and others, "trustees for the Methodist Episcopal Church etc. and their successors forever" the conveyance inures to the church a regularly incorporated religious society.

Visitors of Methodist Episcopal Church vs. Town, 47 N. J. Ed. (2 Dick.) 400; 20 Atl. 488 (N. J. 1890).

**558** Unincorporated religious societies can not take by devise.

Washburne vs. Acome 138 N. Y. S. 963, 74 Misc. Rep. 301.

**559** Where land was conveyed to bishop of Protestant Episcopal Church in the division of Georgia to have and to hold to him the said Episcopal bishop as aforesaid for the use of the Protestant Episcopal Church in said division of Georgia in fee simple, a trust was created which would pass to the successor of Episcopal bishop.

Beckwith vs. St. Philips Parish 69 Ga. 564 (Ga. 1882).

**560** Where a conveyance is made to, or a trust created for the benefit or use of a particular religious society by its denominational name with no other particular designation in the deed of the tenets or doctrine which is to be used to advance and support, the denominational name may be sufficient

guide as to the nature of the trust so far as respects doctrines which are admitted as fundamental.

Hale vs. Everett, 53 N. H. 9; 16, Am. Rep. 82 (N. H. 1868).

**561** Members of a religious society placed all their property in the hands of their leader induced by his fraudulent deceits to discharge a religious duty and to advance their worldly interests by furnishing means for purchasing property for the use of the society. He refused to account and claimed as his own the property conveyed to him. Held that he was a trustee. Scott vs. Thompson 21 Iowa 599 (Iowa 1866).

**562** A subscription was raised to build a house of public worship and the fund committed to the management of certain trustees to purchase ground and build a house to be used by the Methodist Episcopal Church, half the Sundays of the month and the other half by other denominations. The same trustees were authorized to sell the house. After a title was acquired to another denomination and the funds invested in another house of worship for the same church exclusively which was done. Held that the trust was well performed and the original subscribers could not complain.

Alexander vs. Slaven 46 Ky. (7 B. Mon. 351) Ky. 1847.

**563** The property of an extinct religious corporation vests in the former individual members thereof who may validly sell the same in accordance with the customs they may have tactically or expressly adopted, such customs do not conflict with the laws of the state.

Burke vs. Wall 29 La. (Ann.) 38; 29 Am. Rep. 316 (La. 1877).

**564** A conveyance in trust to the trustees of a religious corporation for the use of the corporation vests a title in the corporation which will support an action of ejectment by it.

Van Dauzon vs. Trustees of Preb. Congregation 42 N. Y. (3 Keys) 550 (N. Y. 1867).

**565** The fact that an incorporated church had forfeited its charter and lost its legal existence can not be taken advantage of only by direct proceedings against it for the purpose of declaring the forfeiture and can not be set up in the contest of a will in which the church is a legatee.

*In re* Ardens Will, 1 Co. Sur. 159, 4 N. Y. Sup. 177 (N. Y. 1888).

**566** In a proceeding by an incorporated religious society to compell payment of a legacy to itself, the objection can not be made that the society had lost its corporate existence by non-user or failure to keep up its church organization.

*In re* Trustees of Congregational Church and Society of Cutchogue 131 N. Y., 30 N. E. 43; affirming 1880, 59 Hun. 618; 13 N. Y. Supp. 140 (N. Y. 1892).

**567** The purpose of an action by a religious corporation it is immaterial that its first meeting for election of officers was not called as provided for by Rev. Stat. It is sufficient that it has *de facto* officers.

West Koshkonong Congregation vs. Ottesen, 80 Wis. 62, 49 N. W. 24 (Wis. 1891).

**568** A deed for a church site, which as a part of the consideration thereof provided that said church when on said site, shall, when not in use by the party of the second part hereto, be open to the use of the following orthodox denominations to wit: Created a valid trust in the property in favor of the denomination named, which may be enforced in equity. A corporation with legal capacity to hold property, may take and hold it in trust in the same manner and to the same extent as private individuals may do.

White *et al.* vs. Rice *et al.*, 112, Mich. 403, 70 N. W. 1024.

**569** An instrument designated as a lease which in consideration of rents and covenants demised and leased the property to an individual for the benefit of a church society during the time such society might use and occupy the premises as a church and pay as rent all assessments, created an

estate in fee determinable on the society ceasing to occupy the premises as a church.

Mendenhall vs. First New Church Soc. of Indianapolis, 98 N. E. 57.

**570** In 1830 land was conveyed to trustees to hold for the use of a church "as long as they shall continue to occupy the said premises for that purpose, and whenever said church shall abandon the said premises then the title to cease." A church was erected by the society, which was not then incorporated, and services were held therein by missionaries until 1855, when the building was repaired and dedicated, the society regularly organized according to the usages of the denomination to which it belonged and became a member of classis thereof. A pastor was enstalled, church records were commenced and regular services were held until 1859. Thereafter the pastor withdrew, services became infrequent and ceased after 1880 and there was no election of officers after 1857 until 1886. The classis in 1879 passed a resolution that the church be dissolved but this was not executed and in 1886 the classis declared its former action inoperative and recognized the continued and regular existence of the church. The building had occasionally been used for secular purposes but not by the society or its trustees, and such use did not interfere with its use for worship. Held, that the finding of the jury, that there had been no abandonment of the premises by the society was sustained by the evidence.

Reformed Dutch Church vs. Harder 58 Hun. 605; 12 N. Y. Supp. 297 (N. Y. 1891).

**571** A testotor donated certain lands to a particular church. The church built on the land having burned down. Held, that his heirs could not reclaim the land on the ground that the trust had ceased.

Goode vs. McPherson 51 Mo. 126 (Mo. 1872).

**572** Where the legal title to the property conveyed in trust for the use of a church has been vested in the church

no subsequent violation of the trust will revert the title to the donor or the trustees.

Reformed Dutch Church vs. Mott, 7 Page 77; 32 Am. Dec. 613 (N. Y. 1838).

**573** Land deeded in trust for the use for the Methodist Episcopal Church used for that purpose and no longer reverts to the donor upon its being abandoned by the church conference, the bishop and a council of presiding elders and the preacher in charge; the legal title of the trustees endures no longer than the use to protect for which it was created.

Henderson vs. Hunter 59 Pa. 335 (Pa. 1868).

**574** A grant of land given to a church society for the use and purpose of a church and grave yard is a grant for that special purpose and when that fails the land reverts to the donor or his heirs.

Appeal of Gumbert 110 Pa. 496; 1. Atl. 437 (Pa. 1885).

**575** Where an endorsement on P.'s deed of a lot in P.'s handwriting received from P. in trust for the congregation of Christ Church, Columbia, Nov. 18, 1850 was signed C. for the vestry of Christ Church and a church was built in the lot, but destroyed by fire and the religious association being broken up the congregation ceased to exist. Held, that the trust reverted to P.

Pringle vs. Dorsey 3 S. C. (3 Rich. 502) (S. C. 1872).

**576** A deed to the bishop of a church for the benefit of the church vests the complete legal title in the bishop and the land is not forfeited to the grantor by failure to occupy and use it for a church.

Galbert vs. Cleoft (Civ. App.) 22 S. W. 286 (Tex. 1893).

**577** Where land on which a meeting house stands is enclosed as a meeting house green and conveyed for that use; total abandonment of such use will be a breach of the trust, though the house continues to stand and has been put to no other use. Howe vs. School Dist. No. 3, 43 Vt. 282 (Vt. 1870).

**578** Land which was conveyed to trustees and their successors in office forever in trust that they would erect a house of worship for the members of the Methodist Episcopal Church according to its rules and discipline and which was used for such purpose for a long period and then abandoned and sold to parties who converted it to a blacksmith's shop did thereupon revert in the absence of a provision to that effect. Strong vs. Dodds 32 Wis. 381 (Wis. 1873).

**579** After a grant of land for the church of a certain town made in the charter of the town, the town can not resume it at will nor claim the property without the same consent that is required for the alienation of other church property. Powlet vs. Clark, 13 U. S. (9 Cranch.) 292; 3 L. Ed 735 (U. S. 1815).

**580** A grant of land to Trinity Church made while the restriction in the act of 1699 on the power of the governor to make grants was repealed in 1702, being lawful when it was made, was not affected by the subsequent disapproval of the repealing act by the queen.
People vs. Trinity Church, 22 N. Y. 44 (N. Y. 1860).

**581** The statute prohibiting a religious society from holding more than 20 acres applies to a single religious society and not to a denomination.
Morgan vs. Lesslie; Wright 144 (Ohio).

**582** Under declaration of rights prohibiting conveyances to religious societies except for certain purposes, a conveyance without designating the purpose for which it is made is void.
Trustees of Zion's Church, Baltimore vs. Hilken 84 Md. 170; 35 Atl. 9.

**583** The act of congress of July 1862, para. 3 provides that no corporation or association for religious purposes shall acquire or hold more in any territory of the United States, real estate of greater value than $50,000. From the showing of the facts it appears that the corporation known as the Church of Jesus Christ of Latter Day Saints holds property

largely in excess of the limits fixed by congress. Held, that the showing is sufficient to authorize the appointment of a receiver for the corporation.

United States vs. Church of Latter Day Saints, 5 Utah 361; 15 Pac. 473.

**584** An unincorporated camp meeting association is not a religious denomination or society within the statute authorizing such society to lease land.

O'Neal vs. Patterson, 27 Pa. Law. J. 189.

**585** Under the General Corporation Law of Illinois which provides "any church congregation or society formed for the purpose of religious worship," and restricts the amount of land that may be held by any corporation that may be formed for religious purposes under that act or any law of the state for the incorporation of religious societies to ten acres; only corporations formed for the purpose of religious worship, and not benevolent or missionary societies are intended to be restricted in the ownership of real estate.

Gilmer vs. Stone 120 U. S. 586; 7 Sup. Ct. 689; 3 L. Ed. 734.

**586** A conveyance of land to a corporation after it has taken all the land allowed by law is void.

St. Peter Roman Catholic Congregation vs. Germain, 104 Ill. 440.

**587** The statutory restriction limiting religious societies to ten acres of land they may hold does not apply to a Young Men's Christian Association, the articles of which show it was organized a corporation, "not for profit" such association not being under the control of any religious denomination, and not being formed for the purpose of religious worship.

Hamshler vs. Hamshler 132 Ill. 273; 23 N. E. 1123; 8 L. R. A. 556.

**588** Under Civil Code para. 1275, no religious body, corporation or society can take under a will and the bequest of money to a church is void.

*In re* Wright Estate, Myr. Prob. 213, Cal. (Cal. 1878).

**589** Act of Assembly provides that religious societies can take land only by deed. Held, that the proceeds of a sale of land are to be considered a realty and a bequest to a church of money to arise from the sale of real estate is therefore void. State vs. Bates, 2 Har. 18 (Del. 1835).

**590** In general a bequest to a religious corporation fails if the legatee is not capacitated to take at the testator's death.
Succession of Hardesty 22 La. Ann. 332 (La. 1870).

**591** By the Act of 1796 religious societies or their trustees can take only to the use of the society and nothing passes in a conveyance to them for the purposes forbidden by the policy of the law.
Trustees of Quaker Society vs. Dickenson 12 N. C. 189 (N. C. 1822).

**592** Code c. 57, para. 1, which authorizes the conveyance of land for the residence of a minister does not authorize a bequest and hence under it a bequest to a trustee of the Presbyterian congregation at Martinsburg conditioned to be applied by them towards the purchase of a lot and the erection thereon of a house or the purchase of a house and lot, and conveying the same for the residence of the pastor of said congregation is void.
Amer. Bible Society vs. Pendelton, 7 W. Va. 79 (W. Va. 1873).

**593** Declaration of Rights 1776, Art. 24, which declared that every sale of land to a religious body without leave of the legislature should be void, except sales for not more than two acres to be used for a meeting house or burial ground, imposed no restriction on the power of the legislature in granting such leave, but authorized it to declare limitation or not in its discretion both as to the extent and quality of the estate to be purchased and the purpose for which it should be used. Trustees Catholic Cathedral Church vs. Manning 72 Md. 116; 19 Atl. 599.

**594** A religious corporation having with leave of the legislature acquired six acres of land for a burial ground, afterwards purchased 6½ acres additional, but the latter purchase was void because not made with legislative sanction, subsequently by acts of 1845 a. 284 the corporation was authorized to enlarge the extent of twenty-five acres. The burial ground then owned by them which included the six and one-half acres. Held that the act was ratification and sanction of the six and one-half acre purchase, though it did not expressly refer to it. Trustees of Catholic Cathedral Church vs. Manning, 72 Md. 116; 19 Atl. 599.

**595** The statutory restriction on the amount of land that may be held by a religious corporation, can not be extended by implication to apply on unincorporated religious societies. Alden vs. Rector of St. Peter's Parish, 158 Ill. 631, 42 N. E. 392, 30 S. L. R. A. 556.

**596** A testator devised real property consisting of more than 50 acres of land to a church to be applied to foreign missions. Held, that the devise being made to a church in trust, the statute providing that no church may hold more than 50 acres of land was inapplicable, and the devise was valid under sec. 1 of said law which provides that all devises for the relief or benefit of aged, impotent and poor people, churches or for any other charitable or humane purposes shall be valid.

Kinney vs. Kinney's Exrs. 86 Ky. 610; 6 S. W. 593.

**597** Where under declaration of rights 1776 the legislature could not only grant leave to a religious body to make a future purchase but could also by subsequent legislation ratify or sanction a void purchase previously made.

Trustees Catholic Cathedral Church vs. Manning, 72 Md. 116; 19 Atl. 599.

**598** Although a foreign religious corporation may not be able to hold land, yet, where a will directs a conversion of the realty into personality a bequest of the proceeds to such corporation will be valid.

Church Extension of Methodist Episcopal Church vs. Smith, 56 Md. 362.

**599** The receipt of money under a will and the institution of legal proceedings to recover it are not to be regarded as the exercise of corporate franchises such as are forbidden by statutes to any but domestic corporations. Foreign religious corporations therefore are entitled to recover bequests made in their favor by a testator in this state.

*In re* Ticknor's Estate 13 Mich. 44.

**600** A testator domiciled in New York bequeathed $5000 to the Congregational church in the town of S. in the county of W. in Massachusetts. It appeared that there was such a religious body, but that it was not incorporated. By the law of Massachusetts certain officers of religious societies which the church in question possessed are bodies corporate for the purpose of taking donations to their church. Held, that the capacity of the legatees to take being governed by the laws of its domicile, the legacy was valid.

*In re* Bullock 6 Dem. Sur. 335; 11 N. Y. St. 700.

**601** A bequest of money to a religious society for the purpose of building a church or for the support of a minister is prohibited by constitution 1865, Art. 1, para. 13; which prohibits any gift, sale or bequest of goods and chattles for use, benefit or support of any minister or any church.

First Baptist Church vs. Robberson 71 Mo. 326 (Mo. 1879).

**602** A bequest to an auxiliary unincorporated society assigned to the parent society which is incorporated can not be sustained in favor of the parent society.

Betts vs. Betts 4 Abb. N. C. 317 (N. Y. 1878).

**603** A devise to a religious society without leave first obtained by such society to hold land, from the legislature is void. Murphy vs. Dallum 1 Bland 529 (Md. 1829).

**604** Declaration of Rights 1851, Art. 35, giving the legislature power to legalize gifts to any religious sect, order or denomination, did not give it the power to declare that an association incapable of taking bequests at the time the will

took effect because unincorporated should on subsequent incorporation be capable of taking it.

State vs. Warren 28 Md. 338 (Md. 1868).

**605** The legislature authorized a religious society to take and hold subscriptions and contributions in money or otherwise. Held, that the power thus conferred to take by gift did not embrace the power to take by will.

Brown vs. Thompkins 49 Md. 423 (Md. 1878).

**606** A provision of a charter of a corporation created by an act of legislature authorizing the corporation to take by gift or devise is not a prior or subsequent sanction by the legislature required by bill of rights Art. 38 to render valid every devise to such corporation as the article requires the consent of the legislature to each particular devise.

Church Extension of the Methodist Church vs. Smith, 56 Md. 362 (Md. 1881).

**607** If members are improperly excluded by the deacons from the use of the church property they must apply to the courts for redress or appeal to the congregation. They can not resort to acts of trespass to gain an entrance to the church. Fullright vs. Higginbottom, 133, Mo. 668, 34 S. W. 875 (Mo. 1896).

**608** If trustees of an incorporated religious society close the doors of the church against the minister and congregation, and they break and enter the church by force an indictment at the instance of the trustees will lie against them for forcible entry. People vs. Runkle 9 Johns 147, N. Y. 1812.

**609** Where a minority of the members of a church have left the building in the possession of the majority on the next Sunday force the locks in order to hold services therein, such entry is forcible, though they are aided by the police.

Central Park Baptist Church vs. Patterson Com. Pl. 9 Misc. Rep. 452; 30 N. Y. Supp. 248; 24 Civ. Proc. Rep. 79 (N. Y. 1894). Unangst vs. Shorts, 5 Wharton 505 (Pa. 1849); Tilden vs. Metcalf 2 Day 259 (Conn. 1806); Com'th vs. Oliver, 2 Pars. Eq. 420.

**610** A trustee of a religious society can not be sued by his co-trustee as a trespasser in relation to the property of the society, as his possession is the possession of his co-trustees and his rights equal to those of the others.

Methodist Episcopal Church of Town of Putney vs. Stewart, 27 Barb. 553 (N. Y. 1858).

**611** The question of reunion and union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States submitted to the presbyteries of the two churches involved the question of union according to the basis of union proposed including the church name, and the adoption of the plan of union is an adoption of the change of church name.

Two independent religious denominations may unite without changing the name of either and without any provision of fixing the name of the united church; and, in that event, the name of the united church is a matter for future consideration by it, to be determined in a lawful manner by the lawfully authorized bodies of the united church.

The question of union between the Cumberland Presbyterian Church and the Presbyterian Church in the United States, need not under the presbyterian form of church government be submitted to a direct vote of the members of the churches, but a submission to a vote of the presbyteries thereof is sufficient.

The fact that union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States is an equivalent to a complete destruction of the former is immaterial on the question of the validity of the union, the power under the constitution of the former to change and amend being unlimited.

The united church formed by the union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States exists in continuity with and as successor of both the former denominations and neither has separate existence, but each particular church, presbytery and synod established by the Cumberland Presbyterian Church retains

its undivided integrity and existence and property rights until some change is made by the regular authorities of the united church, having power to make it.

The power of the General Assembly and the Presbyteries of the Cumberland Presbyterian Church to form a union with the Presbyterian Church in the United States is included in the absolute power vested in them by Presbyterian usage and declared by the constitution of the church.

The property given generally to the church authorities of a denomination for the use of a particular church or for the whole denomination is presumptively given with full knowledge that the denomination may change its name or creed and may unite with other denomination, and when that is done the property follows the united church so long as its identity can be established and the trust is not preverted by such change when regularly made.

The several synods, presbyteries, churches, sessions and subordinate church instruments of the Cumberland Presbyterian Church are bound by the action of the General Assembly, and the presbyteries uniting with the Presbyterian Church in the United States and they are now connected with the united church under the name of the Presbyterian Church in the United States of America.

Permanent Committee of Missions of the Pacific Synod of the Cumberland Presbyterian Church vs. The Pacific Synod of the Presbyterian Church of the United States, 106 Pacific 395.

**612** Where the highest judicatories of the two churches determine that the creeds and doctrines of the two churches do not present such fundamental differences that would bar a reunion of the two churches, the civil courts are bound by such decision whether right or wrong. Whether the organic law of a church authorizes the reunion of that church with another rests upon the construction of the constitution of such church, its ecclesiastical standard, and doctrines and history of the church from its organization and is a question

for determination by the highest tribunals of the church the decision of which is binding on the civil courts.

First Presbyterian Church of Lincoln vs. First Cumberland Presbyterian Church, 91 N. E., 761; 245 Ill. 74; Sanders vs. Baggerly 131 S. W. 49; Harris vs. Cosby 55 La. 231 Ala.; Carother vs. Mossley 55 So. 881 Miss.

**613** Where there is schism or division in a religious society both parties are entitled to the joint use of the church for divine worship but this provision of the statute does not apply where the seceding members unite with a distinct religious organization.

Hollar vs. Harney, 4 Ky. Law. Rep. (Abstract) 988.

**614** The real estate upon which a church stands having been deeded with a clause that it should be used for church purposes, and the parsonage adjacent thereto having been built with money contributed with like intention of the donors, the court on ordering a judicial sale of the property because of dissension among two factions thereof should first give privilege of purchasing to the two factions, and one paying the largest price should have the right of exclusive ownership. If neither sees fit to purchase, the sale should be opened to all bidders.

Judgment App. 1898 (Kans.) 54 Pac. 800; 8 Kan. App. 406 modified Immanuel's Gemeinde vs. Keil 58 Pac. 973.

**615** Each division of a church congregation separated in two congregations by the action of its presbytery is entitled according to numerical strength to share in the property and funds of the old congregation.

Wheelock vs. First Presbyterian Church, 51 Pac. 841; 119 Cal. 477.

**616** Congress had power to revoke the charter of the Mormon Church in Utah Territory. Annulment by Congress of charter and ordinance for incorporation of Mormon Church abrogated its existence for the purpose of holding property or doing any corporate act. On dissolution of Mor-

man Church a public corporation, its personalty passed to the United States as grantor under townside act, especially as corporation's holdings exceeded authorized amount.

Restriction on property holdings of Mormon Church were not successfully evaded by intervention of trustees, and corporation equitable estate on dissolution devolved to United States.

136 U. S. 1-48; 34 L. 478, Bk. XI U. S. Notes 1003. See also decree in case of Morman Church vs. United States, 140 U. S. 665, 666, 35 L. 592; Bk. XI U. S. Notes 1241.

**617** The burning of the records of a religious society does not prove its dissolution, neither does the omission of the society to hold meetings for two years or more prove it.

Oakes vs. Hill 31 Mass. (14 Peck.) 442.

**618** The owners of pews in a meeting house owned by a corporation have simply an easement in the freehold.

Union Meeting House vs. Rowell 66 Me. 400 (Me. 1877).

**619** In the nature of the case a pew is not absolute but qualified and conditional property (1821).

Gay vs. Baker 17 Mass. 435; 9 Am. Dec. 159 (1822); Daniel vs. Wood 18 Mass. (8 Pick.) 102; 11 Am. Dec. 151, 1834; Kimball vs. 2d Congre. Parish in Rowley, 41 Mass. (24 Pick.) 347.

**620** Pewholders have merely a qualified usufractuary right in their pews subject to the rights of the religious society to remodel them, and to alter its internal structure of the building or enlarge or remove it or sell the edifice and rebuild elsewhere.

Sohier vs. Trinity Church 109 Mass. 1; Voorhees vs. Presbyterian Church of Amsterdam 8 Barb. 135; *In re* Reformed Dutch Church Saugerties 16 Barb. 237; Cooper vs. Trustees of First Presbyterian Church 32 Barb. 222; Kellog vs. Dickinson 18 Vt. 266 (1846); O'Hear vs. DeGoesbriand 33 Vt. 593; 80 Am. Dec. 653; Perrin vs. Granger 33 Vt. 101 (1860); Erwin vs. Hurd 13 Abb. N. C. 91 N. Y.

**621** Executors of pew owners are not bound to pay pew rent accruing after owner's death; the remedy of the church in such case is by sale of the pew. Pews are personal property, in Pennsylvania.

Church vs. Wells Exrs. 24 Pa. (12 Harris) 249 (Pa. 1855).

**622** A pew holder has an exclusive right to occupy his pew when the house is used for the purpose for which it was erected, but he can not convert his pew to other purposes not contemplated.

Kellogg vs. Dickinson 18 Vt. 266.

**623** Although others may have so far obtained possession of a meeting house as to oust the society, yet a pew holder may maintain trespass for the first invasion of his individual rights to his pew after such ouster.

Howe vs. Stevens, 47 Vt. 262 (1875).

**624** The rector of a Protestant Episcopal Church is a member of the corporate body and can not be removed by a vote of the vestry nor can the vestry exclude him from the church edifice. A rector wrongfully excluded by the vestry from the church edifice need not apply to the ecclesiastical court before resorting to the civil courts for relief.

Ackley vs. Irwin 130 N. Y. S. 841, 71 Misc. Rep. 239.

**625** The liability of a clergyman of the Protestant Episcopal Church to indictment and conviction in the civil courts for an offense charged, in an ecclesiastical proceeding against him in a diacesian court forms no bar to the proceeding in the latter court.

Satterlee vs. The United States 20 App. Dec. Dist. Col. 393.

**626** Where a mutual council was called to investigate a minister's conduct advised his dismissal by the Church and his withdrawal from the ministry, there is no merit in his contention that such determination does not affect his ministerial standing because the church was not a consociated one.

Arthur vs. Northfield Parish Congregational Church Soc. 49 A. 241; 73 Conn. 718.

**627** An agreement between a minister and his parish, that the decision of a council dissolving the relation shall be binding on both parties may be enforced, it seems, in equity.

Stearns vs. First Parish in Bedford 38 Mass. (21 Pick.) 114.

**628** Though the relation of the pastor and people is purely an ecclesiastical one, and ecclesiastical tribunals alone have cognizance of it, yet the courts have jurisdiction of the civil contract for salary. The dissolution of the contract by ecclesiastical authority is conclusive.

Committee vs. Reformed Dutch Church, 54 N. Y. 551.

**629** An appointment of a rector by a vestry being silent as to length of time is an appointment at will which may be ended on reasonable notice.

Stubbs vs. Vestry of St. John's Church 53 A. 917; 96 Md. 267.

**630** Where the minority of a religious congregation claim that the pastor employed does not teach the faith of the society, they must appeal to the supervising tribunal of the church. Wehmer vs. Fokena 78 N. W. 28; 57 Nebr. 510.

**631** Under the policy of the Baptist Church the congregation is supreme and a majority of the members thereof may at a regular meeting properly called dismiss the pastor without notice, or trial on charges.

Morris Street Baptist Church vs. Dart 45 S. E. 753; 67 S. C. 338; 100 Am. St. Rep. 727.

**632** Trust property of an unincorporated church in the hands of trustees can be subjected for a debt to the pastor for salary, and the rent of the parsonage, and in absence of other property, the church edifice and site in the hands of the trustees can be subjugated.

Kelsey vs. Jackson 50 S. E. 951; 123 Ga. 113.

**633** A clergyman may maintain assumpsit against his church for his salary.

Fuller vs. Princeton, 2 Dan Abr. 329, 333, 334, Mass.

**634** Where the trustees of a Methodist Episcopal church without right, but with the wish of a majority of the members close the church against the duly appointed preacher they may be restrained by injunction.

Whitecar vs. Michenor, 37 N. J. Eq. (10 Stew.) 6 (N. J. 1883).

**635** According to the usage and discipline of the Presbyterian Church in the United States, the call of a congregation for the services of a regular pastor and the proceedings of the parties under it are subject to the decision of the presbytery having jurisdiction, and the regular pastoral relation is constituted by the presbytery after the due acceptance of the call by the candidate. This usage is in harmony with Gen. Stat. 1878 C. 34, para. 225, relating to religious corporations which vests the sole authority to ascertain and fix the salary or compensation to be paid to a minister to the society or congregation. Until due acceptance of a call by a minister no civil contract for his permanent employment as regular pastor at a stipulated compensation can be formed or made obligatory upon the congregation.

West vs. First Presbyterian Church of St. Paul, 41 Minn. 94; 42 N. W. 922; 4 L. R. A. 692.

**636** If the vestry have power to settle the minister and fix his salary a call by the wardens and vestry fixing the salary accepted by the minister acted upon by both parties is binding on them.

Youngs vs. Ransom 31 Barb. 49 (N. Y. 1859).

**637** A church may discharge its pastor during the term of his contract, so as to render him a trespasser in case he afterwards enters the pulpit, though it may be liable to him for breach of contract.

Conway vs. Carpenter, 80 Hun. 428; 30 N. Y. Supp. 315.

**638** Where a minister and his parish submit their controversy between them to an ecclesiastical council, the decision of such council, if not impeached for good cause, is a

justification of the party conforming to it though it does not *ex proprio* vigor operate as a judgment.

Proprietors of Holling Street Meeting House vs. John Pierpont, 48 Mass. (17 Mete.) 495.

**639** A Roman Catholic priest in charge at the will of the bishop and occupying a dwelling house belonging to the church is a servant and not a tenant, and his right of occupancy ceases with his service.

Chatard vs. O'Donavan, 80 Ind. 30; 41 Am. Rep. 782.

**640** The vestry men of a parish of a Protestant Episcopal church can not indirectly remove a rector canonically called by reducing his salary as fixed at the time of his election. Bird vs. St. Mark's Church of Waterloo, 62 Iowa 567, 17 N. W. 747 (Iowa 1883).

**641** Where the election of a church vestry is illegal a minister employed by them and having no notice of the illegality will be entitled to the stipulated compensation.

Vestry of St. Luke's Church vs. Mathews, 4 Desans 578; 6 Am. Dec. 619 (S. C. 1815).

**642** A Catholic priest although about to administer an office of his religion on a sick person at the latter's request has no legal authority by virtue of his priestly character, forcibly to remove from the room a person lawfully there.

Cooper vs. McKenna 124 Mass. 284; 26 Am. Rep. 667 (Mass. 1878).

**643** No religious teacher or minister can be enjoined from receiving voluntary contributions though he has been deposed by some ecclesiastical judicatory.

Calkins vs. Cheny 92 Ill. 463.

**644** A writ of mandamus is the proper remedy to put a minister of any religious sect in possession of the pulpit to which he is entitled notwithstanding such pulpit is occupied by another. People vs. Steele 2 Barb. N. Y. 397.

**645** Every Congregational minister may forfeit his office by certain misfeasences. There are three established causes

of forfeiture. An actual change of doctrine; a willful neglect of duty and third, immoral or criminal conduct.

Sheldon vs. Congregational Parish in Easton, 41 Mass. (24 Pick.) 281 (Mass. 1836).

**646** When a minister is called and settled in a charge of the Protestant Episcopal Church unless something to the contrary is distinctly expressed in the call or settlement he can not according to the rules of the church be dismissed without his consent except by the bishop.

Youngs vs. Ransom, 31 Barb. 49 (N. Y. 1859); Patterson vs. Thompson 8 Phila. 252; 1 Leg. Gaz. R. 172.

**647** A contract made by a pastor of the Reformed Dutch Church by his acceptance of a call in the form prescribed in the constitution of such church can be terminated only by mutual consent or by some of the modes prescribed by the laws and usages of said Church.

Connitt vs. Reformed Dutch Church of New Prospect, 54 N. Y. 551 (1874).

**648** The residence of a priest or clergyman is not exempt from taxation as a building for religious worship, because it contains one room set apart as a chapel for religious worship. St. Joseph Church vs. Assessors of Taxes, 12 R. I. 19.

**649** Every minister settled over a parish is a corporation sole or a corporation composed of one person, and he holds the parsonage land in fee simple as a sole corporation in the right of his parish or church; and on his resignation, deprivation, or death, the fee is in abeyance until there is a successor. If a minister or his predecessor be disseized of the parsonage, he may enter, if his right of entry be not taken away, and declare upon his own seizin or upon that of his predecessor, according to the nature of the case, and where a minister was settled in a town, and upon his decease a successor of the same denomination was settled, he will succeed in all the rights of the former and can recover the lands which belong to the parish. A parish, however, may be seized

of land for the purpose of supporting a minister out of the proceeds of it, and yet it may not be the property of the minister so as to make it technically the parsonage and cause the seizen to be in the minister as a sole corporation.

*In re* First Presb. Soc. 106 N. Y. 251.

**650** In the absence of agreement to the contrary the pastoral office is for the life of the incumbent and terminable only in the manner and for the causes established by law, a court of law can not determine what acts or omissions will create a forfeiture, but a court of equity will at the motion of the society oust a minister who has been deposed by his denomination and whom the trustees insist upon retaining.

Whitney vs. First Ecclesiastical Soc. 5 Conn. 405;
Bristor vs. Burr 120 N. Y. 427; 24 N. E. 937;
Isham vs. Fullager, 14 Abb. N. Cas. N. Y. 363.

**651** S. received a call to become the pastor of a certain church which call was signed by the elders and deacons in pursuance of a vote of the church. He never accepted the call, or became pastor according to the rules of the church, though he acted as pastor for a year. Held, that in an action for salary, founded upon the written call, that S. having failed of accept the call was entitled to none of the emoluments of the office of pastor, and that there was nothing upon which to base a *quantum meruit,* his claim being as pastor, which he never was.

Neil vs. Spencer 5 Ill. App. (5 Bradw.) 461.

**652** Washington and Jefferson College in Washington County was incorporated by act of March 4th, 1865 P. L. 565, for the cultivation and advancement of literature and science, and morality and religion, without regard to sect or creed by the education of youth of the male sex in classical learning etc. In reply to the inquiry by the Board of Revenue Commissioners as to the propriety of granting the application of W. for exoneration of the tax levied on mortgages and judgments constituting part of the endowment fund of the college, the attorney general held that said mortgage se-

curities were not liable to state taxation under existing laws the opinion being based on the assumption that the interest accruing upon the investments was used for the purposes of the institution as intended by the legislature in its act of incorporation. Washington & Jefferson College Endowment Fund Tax 10 Pa. C. C. 478, 1891, Hensel Atty. Gen'l; Gen'l Assembly of Presb. Ch. vs. Gratz 139 Pa. 497.

**653** A charitable institution even if it were a purely public charity could not hold land in another county from which a revenue is derived free from taxation.

Delaware County vs. Sisters of St. Francis, 2, Del. Cp. 149.

**654** "In actual use" means in exclusive use and a mere concurrent or alternate occupation by the church does not come within the requirements for exemption.

Phila. vs. Barber 160 Pa. 123.

**655** Property not used directly for the purposes and in the operation of the charity for profit is not exempt, and the devotion of the profits to the support of the charity will not alter this result.

Penna. Hospital vs. Delaware County 169 Pa. 305.

**656** Under the constitution and the act of 1874 parsonages belonging to a church or religious society as well as institutions denominational in their character and not purely public charity are no longer exempt from taxation for county, city, borough, poor and school purposes.

Greenfield School Directors vs. Carbondale Poor Directors 5 Luz. L. Rep. 116.

**657** (NEBR.) Property used directly, immediately and exclusively for religious purposes is exempt from taxation without regard to the question of direct ownership.

Scott vs. Society of Russian Israelites 81 N. W. 624, 59 Nebr. 571.

**658** (PA.) All church meeting houses or other regular places of stated worship with the grounds thereto annexed necessary for the occupancy and enjoyment of the same; all

burial grounds not used or held for private or corporate profit, all hospitals, universities, colleges, seminaries, academies, association, and institutions of learning, benevolence or charity with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, found endowed and maintained by private or public charity etc. * * * * be and the same are hereby exempted from all and every county, city, borough, bounty, road, school and poor tax; provided that all property, real and personal other than that which is in actual use and occupation for the purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except where exempted by law for state purposes, and nothing herein contained shall exempt same therefrom. Act. of Leg. May 14, 1874 P. L. Pa. 158.

**659** (WASH.) A parsonage is taxable if situated separate from the lot on which the church is located.

Foley vs. Congregational Church of Stellacoom 121 Pac. 65; 67 Wash. 280.

**660** (PA.) In Harrisburg vs. Shilem 32 C. C. Pa. 589, Judge Kunkle says "The act of June 4th, 1901 R. L. 364, p. 5 declares that public property used for public purposes shall not be subject to tax claims or municipal claims; and actual places of religious worship, places of burial not used for private or corporate profit, and institutions of purely public charity shall not be subject to tax claims or municipal claims, except for removal of nuisances for sewer claims and sewer connections, or for the curbing, paving or repaving or repairing of the footway in front thereof.

**661** (WIS.) Real property title to which is held absolutely by a bishop of the Roman Catholic Church in accordance with its laws is not owned in the sense of Rev. Stat. para. 1038 subd. 3 exempting from taxation property "owned by any religious association."

Katzer vs. City of Milwaukee 79 N. W. 745.

**662** (Ill.) Land held by the congregation under contract for deed is not exempt from taxation.

People vs. Logan Square Presbyterian Church 94 N. E. 155; 249 Ill. 9.

**663** (Ill.) Property exclusively used for public worship is exempt from taxation.

*In re* Walker 60 N. E. 144; 200 Ill. 500.

**664** (Mass.) A lot held by a religious society and intended to be used as a site for a permanent church edifice on which no work has been done is not exempt from taxation though the other portion is occupied by a temporary structure used as a church.

All Saints Parish vs. Inhabitants of Town of Brookline 59 N E. 1003, 178 Mass. 404.

**665** (N. J.) A mortgage held by a church as a security for a sum of money bequeathed to said church with the direction that the interest therefrom is to be used in the payment of the minister's salary is exempt from taxation on the ground that the sum secured is an endowment of a religious society.

Trustees of First Presbyterian Church vs. Silverthorne, 19 A. 124; 52 N. J. Law (23 Vroom.) 73.

**666** (S. Car.) Under Const. Art. 10, para. 4, providing that churches and parsonages shall be exempt from taxation, a parsonage belonging to a church, which the pastor rents and collects and applies the rent to his salary or the rent of another parsonage does not loose the character as a parsonage and is exempt from taxation.

Prot. Episcopal Church of Parish of St. Phillip vs. Pribeau 40 S. E. 1026; 63 S. C. 70.

**667** (Ill.) Church property is only exempt from taxation when actually and exclusively used for public worship so that property used for public worship and school purposes generally would not be exempt.

People vs. Deutsche Evangelische Lutherische Jehovah Gemeinde etc. 94 N. E. 162; 249 Ill. 142; *In re* Walker 60 N. E. 144; 200 Ill. 500.

**668** (KENTY.) Places actually used for public worship with grounds attached thereto and used, and used appurtenances to the house of worship and all parsonages and residences owned by a religious society and occupied as a home and for no other purposes by the minister of a church is exempt from taxation. Trustees Broadway Christian Church vs. Commonwealth 66 S. W. 32; 112 Ky. 448.

**669** (IOWA) Property belonging to the First Presbyterian Church of Iowa City, not exceeding three acres in extent and used solely for church purposes is not liable for taxation. Byington vs. Wood 12 Iowa 479.

**670** (PA.) Ground upon which a church is being built is not exempt from taxation.

Erie Commissioners vs. Bishop 13 Phila. 509.

**671** (MD.) Exempting from taxation all houses of public worship does not exempt bank stock or other property held in trust for such institutions whether incorporated or otherwise. *In re* tax case 12 Gill. & J. (Md.) 117.

**672** (N. C.) Property rented by a church, rents being applied to charitable, religious and benevolent purposes, held not exempt from taxation.

Davis vs. City of Salisbury 76 S. E. 687.

**673** (MASS.) Cemeteries do not come within the purview of the act of exempting from taxation the property of benevolent and charitable associations.

Town of Milford vs. Commissioners of Worchester Co. 100 N. E. 60, 212 Mass. 162.

**674** (MASS.) The word "houses" exempting houses of religious worship from taxation includes the land.

Trinity Church vs. City of Boston 118 Mass. 164.

**675** (MICH.) Statutes exempting from taxation all houses of public worship etc. do not exempt the land on which they stand.

Lefevre vs. City of Detroit 2 Mich. 586.

**676** (N. H.) The parish house of a church was situated near it and used in connection with it for the observance of various religious services usually deemed essential in the support of public worship, which was the primary object of its erection.

The building subserved all the religious uses for which it was erected and was maintained as a house of public worship so far as the needs and conveniences of the church required. Held that it was a house of public worship within the Publ. Statutes exempting such places from taxation, though it was occasionally used for secular entertainments, such use not interfering with its use for religious purposes and though a fee was received for such secular use, the statute not contemplating that the building should be exclusively used for public worship to be exempt.

St. Paul's Church vs. City of Concord 71 Atl. 531; 75 N. H. 420.

**677** (MASS.) The real estate of a religious institution is not exempt from taxation unless used and appropriated for their distinctive purposes.

Burr vs. City of Boston, 95 N. E. 208; 28 Mass. 537.

**678** (KY.) Land leased without rent for church purposes on which a church has been built is exempt from taxation.

City of Louisville vs. Werne 80, S. W. 224; 25 Ky. Law. Rep. 2196.

**679** (LA.) Property used by a church as a residence of a minister exempt from taxation under Const. of 1879 exempting from taxation all buildings and property used exclusively for places of public worship.

State vs. Board of Assessors of Parish of Orleans 26 So. 872; 52 La. Arm. 223.

**680** (ILL.) Property owned by a church but principally used for a family residence by the pastor can not be held to be used exclusively for religious purposes and therefore capable of exemption from taxation within the meaning of the constitution even though it brings no pecuniary profit, and the

lot is of the ordinary size used for residence purposes and the pastor devotes his entire time to the work of the church.
People vs. The First Congregational Church of Oak Park, 83 N. E. 536; 232 Ill. 158.

**681** (Ark.) Constitution Art. 16 Para. exempts taxation churches used as such.
Pulaski County vs. First Baptist Church 110 S. W. 1034; 86 Ark. 202.

**682** (Ohio) Statute exempting houses of worship from taxation, held not to apply to church edifice in process of erection. Matlack vs. Jones 2 Disn. 2.

**683** (Pa.) A church which ceases to be used as a place of public worship ceases *ipso facto* to be exempt from taxation. Moore vs. Taylor 147 Pa. 481; 23 Atl. 768.

**684** (R. I.) Under statute exempting from taxation buildings used and occupied exclusively for religious or educational purposes, a building for religious purposes is exempt although it is incidentally or occasionally used for educational purposes. St. Mary's Church vs. Tripp 14 R. I. 307.

**685** (Vt.) Under Rev. Law. para. 270 exempting from taxation property "granted sequestered or used for public pious or charitable purposes is exempt though the deed or record title of such property does not show it to be devoted to such uses. Williard vs. Pike 59 Vt. 209; 9 Atl. 907.

**686** (D. C.) Act of congress authorizing the levy of taxes for the support of the District of Columbia exempts from taxation church buildings and grounds "actually occupied," but provides that if any portion of any building or grounds shall be used to secure a rent or income or for any business purposes such portion shall be taxed against the owner. Held that where a church was built at one end of a piece of land so as to enable the ecclesiastical authorities an

income from the lease or sale of the lots at the other end, such lots were not exempt from taxation though a part of the enclosure in which the church stands.

Gibbons vs. the District of Columbia 116 U. S. 404; 6 Sup. Ct. 427; 29 L. Ed. 680.

**687** (Oreg.) Statute providing that such real estate belonging to a charitable institution as shall actually be occupied for the purposes for which they were incorporated shall be exempt from taxation, does not exempt a building owned by a charitable institution, only a part of which is occupied for the purposes of the institution though the revenues derived from the use of the remainder are devoted to the object of the institution.

Hibernian Benevolent Society vs. Kelley 28 Or. 173; 42 Pac. 3.

**688** (Tenn.) A publication house incorporated as an arm for the Methodist Episc. Church for the manufacture and distributing books disseminating religious knowledge with the purpose that the proceeds shall be appropriated for the benefit of the superannuated preachers is a religious charitable institution. The direct physical use of the books by the beneficiaries is not essential to the exemption, but the same may be sold and the proceeds applied to the use.

Meth. Episc. Church South vs. Hinton, 92 Tenn. (8 Pickle.) 188; 21 S. W. 321.

**689** (Pa.) Act of 1871 which provides that all churches shall be exempt from taxation applies to a church leased by a congregation as well as to one which the congregation owns. Howels vs. City, 8 Phila. 280; Leg. Gaz. R. 242.

**690** (La.) Vacant lots bought by the authorities of a church and held in private ownership in anticipation of the increase of the city and with the intention of possibly erecting thereon a church when needed are not exempt from taxation, as a place of public worship.

Enaut vs. McQuire, 36 La. Ann. 804; 51 Am. Rep. 14.

**691** (Mo.) A house and lot purchased as a residence for the bishops of the Meth. Episc. Church, who may from time to time reside in the city of St. Louis, are exempt from taxation. Bishop Residence Co. vs. Hudson 91 Mo. 671; 4 S. W. 435.

**692** (Ind.) A parsonage erected for the pastor's accommodation is not exempt from taxation.
Trustees of Meth. Church vs. Ellis 38 Ind. 3.

**693** (Iowa) The dwellings of clergymen owned by religious societies and used exclusively for residential purposes without income to the owners are exempt from taxes.
Trustees of Griswold College vs. State 46 Iowa 275, 26 Amer. Rept. 138; Cook vs. Hutchins 46 Iowa 706.

**694** (Kan.) A dwelling house in Lawrence and owned by the diocese of the Episcopal Church and used by the bishop exclusively as a residence is not exempt from taxation.
Vall vs. Beach 10 Kans. 214.

**695** (Minn.) Building occupied by the parish priest as a residence is not exempt from taxation.
Henepin County vs. Grace 27 Minn. 503; 8 N. W. 701; Ramsey County vs. the Church of the Good Shepherd 45 Minn. 229; 47 N. W. 783.

**696** (Mass.) Parsonage and grounds whereupon it stands is not exempt from taxation.
Third Congr. Society vs. City of Springfield 147 Mass. 306; 18 N. E. 68.

**697** (N. Y.) Land of a religious society held to be exempt from taxation from the time the society entered into possession and began to erect a church thereon.
Washington Heights M. E. Church vs. City of New York 20 Hunt 297.

**698** (Ill.) In order to make property exempt from taxation as church property under the provisions of the constitution and revenue act of Illinois, the title to the property must be in a religious corporation or church society as a body. A church edifice and the land upon which it stands owned by

a citizen individually, and regularly used for religious service is not exempt from taxation.

People vs. Anderson 117 Ill. 50; 7 N. E. 625.

**699** (Ohio) Rev. Statutes exempting from taxation houses used exclusively for public worship and the grounds attached to such buildings necessary for their proper occupancy and not leased or otherwise used with the view of profit applies to property belonging to the worshipers as an estate of perpetual leasehold, so as to exempt from taxation.

Church of the Epiphany vs. Raine 14, O. Dec. 449; 24 Wkly. Law Bul. 180.

**700** (Conn.) Under General statute exemption from taxation buildings exclusively occupied as churches or belonging to ecclesiastical societies a building belonging to a church society, regularly and steadily occupied for religious worship is not liable to taxation because it is rented for entertainments and at times for political conventions.

First Unitarian Soc. of Hartford vs. Town of Hartford, 60 Conn. 368; 34 Atl. 89.

**701** (Ind.) Under the statute exempting from taxation land on which a house of religious worship is situated and part of the lot diverted to secular use or gain ceases to be exempt. Orr vs. Baker, 4 Ind. 86.

**702** (Conn.) Statute of 1702 exempting from taxation property given for the maintenance of the ministry of the Gospel extends to money at interest given for that object.

Atwater vs. Town of Woodbridge 6 Conn. 223; 16 Am. Dec. 46.

**703** (Ga.) Land upon which there was a parsonage belonging to a church is not a place of religious worship within the meaning of the constitution art. 7 exempting places of public worship from taxation.

St. Mark's Church vs. City of Brunswick 78 Ga. 541; 3 S. E. 561.

**704** (ME.) Where one claims the benefit of Statute 1811 granting exemption from taxation to all ministers ordained agreeably to the usages of the sect or denomination to which they belong, it is sufficient for such minister to be settled over a religious society, though it is composed of members resident in several towns.

Baldwin vs. Clinch 1 Me. (1 Greenlf.) 102.

**705** (MASS.) A minister claiming the exemption of Statute of 1811 should be a settled minister; that is he should be ordained over some particular society, either incorporated or unincorporated, which shall be entitled to his services and bound to him for his support in some form or other.

Ruggles vs. Kimball 12 Mass. 337.

**706** (N. H.) The estate of an ordained minister who is not settled over a corporate society is not exempt from taxation. Kidder vs. French Smith 155.

**707** (N. Y.) One is entitled to exemption of $1500 given by statute to ministers of the Gospel who for 35 years was such, and who since for 15 years has withdrawn from active duties of his calling owing to age and infirmity, not having, however, embraced any other occupation.

People vs. Peterson 31 Hun. 421.

**708** Where the law of the church gave the priest exclusive control over revenues which were paid by the congregation for pious uses and not derived from the use of church property and there was no statute to the contrary he was entitled to control such funds.

Ryan vs. Danzilla 86 A. 1089; 239 Pa. 486.

**709** Permission by county commissioners to a church to erect a chapel on the lands of the county poor-farm to be used by the inmates coupled with a provision that the same permission be granted to all other religious sects did not violate the constitution prohibiting any county from granting any land to any church for sectarian purposes.

Reichwald vs. Catholic Bishop of Chicago, 101 N. E. 266; 258 Ill. 44.

**710** Where a church charter provides that vestrymen shall be chosen from time to time by members of said church agreeable to its constitution which in turn provides that "no person to have vote except those who have been regularly admitted and shall have been members of the church 12 months preceding to the election, a law requiring more than 12 months of membership as perquisite to voting is repugnant to the charter and constitution and is invalid.

Howard vs. African Episcopal Church of St. Thomas 52 Pa. Super. Ct. 116.

**711** Under Rev. Stat. 1911, Art. 7507, Para. 1 exempting from taxation building used by religious societies unless leased or otherwise used with a view to profit, premises used exclusively for religious worship not owned by the religious society but rented by it are not exempt.

City of Dallas vs. Cochran 166 S. W. 32.

**712** The burden is upon one claiming exemption from taxation to show that his property comes within the exempted class. Northern Pass. Ry. Co. vs. Mjelde 137 P. 386; 48 Mont. 287.

**713** Taxation is the rule, exemption the exception and the burden of showing exemption rests upon the one claiming it. People ex. ect. Walcott vs. Parker 146 N. Y. S. 753, 84 Misc. Rep. 534.

**714** Under Laws 1907, c. 135, Para. 1, 2, providing that religious corporations shall receive water free from the city of New York for the purposes for which it is used at the time of the enactment of the law, the city can not recover for water used by the church in the operation of its pipe organ, where it was used at the time of the enactment of the statute.

Bay Ridge Dutch Reformed Church vs. City of New York 146 N. Y. S. 1014; 162 App. Div. 49.

**715** A religious corporation teaching a form of religion based on "New Thought" and teaching it through churches cannot acquire a monopoly of teaching that form of religion

by means of churches and it may not enjoin one from conducting services under a similar name.

New Thought Church vs. Chapin 144 N. Y. St. 1026; 159 App. Div. 703.

**716** Where a trustee erecting a building for a religious order left building material on the street the successor as trustee held not individually liable for injury for a collision.

City of Louisville vs. Donaghan 162 S. W. 1110; 157 Ky. 243.

**717** The authority for officers of a Methodist church to borrow money in the church name on its credit must be conferred by the congregation and not by the church trustees.

Marine Trust Co. vs. St. James' African Methodist Episcopal Church 88 A. 1075.

**718** A Roman Catholic bishop is a mere dry trustee of the properties owned by the various congregations in diocese and as such he has neither interest in the estate nor power to control it or direct its management in any way. He is simply the passive silent depository of the legal title and nothing more.

Carrick Borough vs. Canavin 55 Pa. Super. Ct. 233; 90 A. 147.

**719** A pew holder has no title to the soil nor to the edifice but possesses only a limited usufractory right to the use of the pew when the building is open for services subject to the reasonable regulations of the church. The rights of a pew holder exist only so long as the church stands, and when the church edifice becomes delapidated that it must be removed, or is destroyed by fire his rights are gone, and he is entitled to no indemnity. Conveyance of a pew as long as the church should endure held to refer to the church edifice and not to the denomination as an ecclesiastical body and hence pew holders' rights cease upon destruction of the building by fire.

Witthaus vs. St. Thomas' Church in the City and County of New York 146 N. Y. St. 279; 161 App. Div. 208.

**720** Where a pew holder is deprived of his pew for convenience or from expediency and not from necessity his remedy is by an action at law for damages.

Witthaus vs. St. Thomas' Church in the City and County of New York 146 N. Y. St. 279; 161 App. Div. 208.

**721** In pew holder's action to compel allotment of pews in a new building unaccepted and withdrawn offer to pay plaintiff the value of his pews, not admissible to show his absolute ownership thereof.

Witthaus vs. St. Thomas' Church in the City and County of New York 146 N. Y. St. 279; 161 App. Div. 208.

**722** A religious society not held liable for trustee's negligence where it did not appear that he was acting within his authority or performed a duty imposed upon him by the trust. City of Louisville vs. Donaghue, 162 S. W. 1110; 157 Ky. 243.

**723** A church is a body of Christian believers holding the same creed, observing the same rites, and acknowledging the same ecclesiastical authority. The terms "Church" and "Society" are used to express the same thing, namely a religious body organized to sustain public worship. The term "Church" imports an organization for religious purposes.

*In re* Douglass Estate 143 N. W. 299.

**724** A church having elected officers and conducting services is a *de facto* corporation and becomes a *de jure* corporation upon recording an affidavit in compliance with sections 35 and 36 of the Corporation Act—Hurds Rev. Stat. 194 c. 32. Trapp vs. St. John's Bapt. Church, 174 Ill. App. 213.

**725** Where controversies in the civil courts concerning property rights of religious societies of the associated class are dependent on questions of doctrine, discipline, ecclesiastical law, or church government.

The decision of the highest tribunal of the organization will be accepted by the courts as conclusive.

Barkley vs. Hay 208 F. 319.

**726** Whether a constitutional union between the Cumberland Presbyterian Church and the Presbyterian Church of the United States of America was effected in May 1906, was an ecclesiastical question, the determination of which in the affirmative was conclusive on the courts.

Sherard vs. Walton 206 F. 562.

**727** A deed of a lot in trust for the erection of a house of worship for the use of the members of a religious denomination without the legislative sanction required by the declaration of rights was void.

Mills vs. Trustees of Zion's Chapel in Cambridge 87 A. 257; 119 Md. 510.

**728** A devise of an entire estate consisting of both real and personal property was not violative of Code 1904 Para. 1398 prohibiting churches from taking a devise of realty were a portion of the estate was to be devoted by the church to other purposes and its beneficial interest could be satisfied out of the personal.

St. Stephan's Ep. Ch. vs. Norris Adme. 78 S. E. 622.

**729** Where property is conveyed by an individual to trustees of an incorporated subordinate, and they with the consent of the unincorporated main religious association convey to the deacons of a local church on condition that the property shall "revert back to the association" on the failure of the grantees to comply with certain conditions, the title will revert on a breach to the trustees in whom the title was formerly vested.

Stanley vs. City of Glennville 140 Ga. 306; 78 S. E. 1064.

**730** A resolution passed by an unincorporated religious society construed and held to the trustees of the incorporated subordinate society conveyed certain land and not merely the building without the land.

Stanley vs. City of Glennville 140 Ga. 306, 78 S. E.

**731** Property purchased or conveyed for the general use of a congregation of the Presbyterian or the Cumberland

Presbyterian Church is vested not in the individual members or in the congregation but in the general Church which through its General Assembly has the ultimate right of ownership and power of control.

Barkley vs. Hays, 208 F. 319.

**732** Where there is a schism in a church the courts will not undertake to inquire into the ecclesiastical acts of the several parties, but will determine the property rights in favor of the part or division maintaining the church organization as it previously existed.

Middleton vs. Ellison 78 S. E. 739; 95 S. C. 158.

**733** Where defendants originally took their pulpits under the authority of the plaintiff bishop they can not subsequently question his authority, and a temporary injunction will be issued from interference in all cases, except when the congregation practically unanimously adopt the theories of defendants. Middleton vs. Ellison 78 S. E. 739; 95 S. C. 158.

**734** Officers of a general church organization held entitled as representatives of the general membership to maintain a suit in equity to determine rights of the church in property. Barkley vs. Hay 208 F. 319.

**735** Where the Supreme Court directs a conveyance of church property from the bishop to trustees for the congregation on the grounds that under Act. of April 6th, 1855 P. L. 328 the title is in the congregation and subsequently refuses to order a conveyance to the bishop as trustee, a bill by certain members of the congregation acting persuant to an order from the bishop to enjoin the holding of services in the church while the court's decision shall stand, will be dismissed. Novicas vs. Kruezunar 87 A. 686; 240 Pa. 248.

**736** A contract between the pastor of a church who was *ex-officio* a member of the Board of Directors of the church corporation and plaintiff for the construction of a well involving an expenditure of more than $300 not consented to by a

vote of all the directors was invalid under statute 1911, para. 2001 to 14. Conite vs. Congregation of St. John the Baptist 143 N. W. 180; 154 Wis. 405.

**737** Where a congregation has not held out the pastor or bishop or both as its general agents authorized to transact temporal business and to make contracts involving an expenditure of more than $300 and had not ratified a contract by the pastor for the construction of a well it was not estopped to deny liability on the contract though after the work was completed it was connected with the parish buildings and water used therefrom.

Conite vs. Congregation of St. John the Baptist 143 N. W. 180; 154 Wis. 405.

**738** A Christian church in the absence of anything in the constitution to the contrary has inherent power to unite with another church involving the surrender of name and organization of one of them where there is a sufficient identity of faith to warrant the union. The union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church held legal and valid and vest the united church with all property rights of each constituent. Barkley vs. Hay 208 F. 319.

**739** If, in violation of its own laws, a church ousts a preacher from his pulpit and in effect wrongfully deprives him of his living he can have recourse to the civil courts for restoration of his rights. When rights of property are in question civil courts will inquire whether the organic rules and forms of proceeding prescribed by the ecclesiastical body have been followed. A church can not illegally wrest from its servants their property any more than can an individual.

Wallace vs. Trustees 194 Pa. 178.

**740** Where a division takes place in church corporation and a larger majority of members adhere to one pastor, retain possession of the church edifice and make voluntary contributions for the salary and support of the minister and the

minority adhere to another pastor and are afterwards declared to be entitled to the church edifice as representing the body to which the church professes to belong, it is inequitable, as a part of a decree placing the latter body in possession to require the payment by the larger body of funds contributed by it for the minister's salary and support, but all contributions made for general purposes of church corporation as missionary and educational funds etc. must be paid over to the body found to be the legal church organization.

Bliem vs. Schultz 37 Wkly. N. C. 169; 170 Pa. 563.

**741** When a church organized as belonging to a particular sect and in subordination to a particular form of government severs its connection from that government, the title to the property belongs to such organization as adheres to the religious principles accepted before the controversy arose.

A church organized in subordination of a general conference whose charter provided that the property of any church which should become extinct should vest in said conference, and that a church should be considered extinct when there were not sufficient members left to fill the offices, voted to go into independency by a vote of all but two members.

Held that these two constituted the church and not being sufficient to fill the offices the property of the church was forfeited and became vested in the general conference.

Appeal of the First Methodist Protestant Church of Scranton 16 W. N. & C. 245.

**742** In the case of the Central Trust Co. of New York vs. Colombus H. V. & T. Railway Co. reported in Vol. 92 Federal Reporter page 919, Judge Taft says; "Internal Revenue Stamp Act of 1898 requires stamps on deeds of conveyance in proportion to the 'consideration or value' of the interest transferred and not to the entire value of the property conveyed subject to incumbrance."

The stamp act of 1914 is the same in regard to stamps on conveyances as that of 1898 only the words "of the interest" were added after the words "consideration or value"

so that it reads: "Conveyances, deeds or writings whereby any land, tenaments, or any other realty sold shall be granted, assigned, transferred, or otherwise conveyed or invested in the purchase and purchasers, or any other person or persons by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or incumbrance thereon exceed $100 and does not exceed $500.—50 cents and for each $500 or any fractional part thereof in excess of $500.—50 cents," conforming strictly with Judge Taft's ruling in the above cited case.

For rulings on other points in regard to stamp duty see American Digest Decennial Edition 1897-1906 Vol. II. Internal Revenue Sec. 19

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# SUPPLEMENT

TO THE

# Decisions of the Civil Courts

GOVERNING

# Religious Societies

herein contained collated under
General Subjects

BY
C. M. BOUSH

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To students of theology, who subsequently intend to enter the ministry, I wish to say, that after you have finished your course of study in the different branches of theology satisfactorily to your instructors and yourself, you expect to leave these quiet halls of learning. Instead of being recipients of instruction and knowledge, you become dispensers thereof as ministers of God, teachers and leaders of men in the most essential rules of life.

To be able to make this change and be successful therein, you must feel confident within yourself, that you are well prepared for the task.

The church or congregation over which you may be placed is not solely an ecclesiastical, spiritual body, it is also a temporal civic body; it is a body of communicants gathered into church order according to established usages in a town, parish or precinct as a religious society according to law, and actually connected and associated for religious purposes for the time being, it is the church of such society as to all questions of property depending upon that relation.

The Church looks to you for wise counsel and prudent leadership in matters temporal as well as in ecclesiastical matters. It is, therefore, necessary for you to be well informed in regard to laws ruling the temporal affairs of the Church, and the interpretation thereof by the civil courts.

The temporalities of a church or other religious society over which civil courts have control, consist of not only property rights, its proper management and use, they include the

rights, privileges and duties of members, pew-holders, managers, trustees and officers; the relation of the church to the community and state and its own organization and judicatories.

All of these are subject to the common law of the land, established by universal consent, customs and legislative enactments, interpreted by the civil courts. Ecclesiastical courts are guided by ecclesiastical law, and can therefore consider and decide only ecclesiastical questions — see quotations indexed under "Ecclesiastical Judicatories."

Therefore all matters pertaining to the temporal rights, powers, privileges and duties of religious societies, their members and judicatories, and their property rights, are subject to revision by the civil courts whose decisions, rulings and edicts are conclusive and can be enforced—see quotations indexed under "Civil Courts."

**Church Government Appears in Four Distinct Forms**

1 The congregational, placing in the local church accepting the denominational dogmas, the power to make its own laws and regulations.

2 Associate churches originate general laws in the General Assembly or Synod of representatives from the subordinate district assemblies, and make them valid by a given majority vote of district assemblies, and permit district assemblies and local churches to adopt regulations in harmony with the general laws befitting their own conditions and necessities.

3. The Episcopal form of church government in this country has its general laws, rules and regulations ordained and established by its House of Bishops assembled for the purpose, permitting the local churches, rectors and vestries to adopt by-laws in harmony with the general laws of the Church befitting their condition and necessities.

4 The Roman Church receives its rules, laws and regulations by edicts from the Pope, adopted by his consistory of cardinals, and are administered by its bishops and priests befitting existing conditions and necessities of the diocese or local

churches, but subject to the advice, permission or dictum of the superior.

All other religious societies outside of the Christian Church, such as the Jews, are generally conducted under the congregational system. Societies of deists, atheists, free religionists and other infidels, though they may call themselves Unitarians, are not Christian Unitarians, they are not a body of believers and can not claim to be a religious society or church. Quot. 4.

The diversity of the law-making powers of religious societies renders it difficult to devise uniform laws, rules and regulations for the management of their temporal affairs to be acceptable, just and fair to all of them. The religious liberty guaranteed by the constitution does not permit the establishment of an ecclesiastical judicatory endowed with the power to make general uniform laws for the government and management of the temporal affairs of religious bodies. Nevertheless the constitutions of this nation, state and federal, and its laws and customs, all go to show, that this is a religious Christian nation, and no purpose of action against religion can be imputed to any legislation (quot. 27).

The decisions, rules and regulations of ecclesiastical courts on ecclesiastical matters are respected in all the civil courts. Quot. 410, 411, 409, 428, 429, 453, 460, 471, 476, 725.

Christianity is part of the common law, and maliciously vilifying the Christian religion is an indictable offense. Quot. 29.

It is honored and respected anywhere and everywhere for its work and intense efforts to advance good morals, peace and prosperity in the country.

In this publication the author endeavored to give the synopsis or syllabus of every ruling decision rendered by the appellate courts, state and federal, as found in the legal reports thereof; they are indexed under such headings as suggest themselves to the inquiring mind, so that an authorative answer is readily found to the question or point at issue, giving the case,

book and page where the whole proceedings can be found. As you are not studying the intricacies of the law arising in arguments pro and con, the principle of the question or point decided is sufficient to put you on your guard not to get into legal controversy, and to assert your rights, powers and privileges, and to do your duty properly and effectually.

The author is pleased to be able to give you this kind of information and advice, collected in this volume by several years of research in the largest libraries of the country, and a result of his experience in this kind of practice for over four decades, and he sincerely hopes that his labor may be rewarded by keeping churches out of litigation, often too hastily entered into through misapprehension, erroneous information, evil advice and personal ambition.

The best mode to become familiar with these rulings by the civil courts and to fasten them in your memory is to work out in your own mind questions that may arise from diversity of views; finding in the index the numbers of quotations applicable; compare them with facts and conditions, and apply them accordingly. I suggest the following subjects for consideration.

## The Church and Congregation.

The first question suggesting itself would be: What constitutes the Church? The civil courts answer,

The civil courts' definition of the Church.

1 The Church consists of persons who have made a public confession of religion, and who are associated together by a covenant of church fellowship for the purpose of celebrating the sacraments and watching over the spiritual welfare of each other; it is usually organized

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The black numbers refer to the numbers of the respective questions on the subjects — see table of questions. The notes on the outside margins are to assist in finding the subject desired. Quot. 1, 2, 3, etc., refers to the number of the quotations in the body of the book.

Of a congregation.

**2** into congregations united for the purpose of having a common place of worship, to provide for a proper teacher to instruct them in religious doctrines and duties. Quot. 1, 2, 723.

Proper organization.

**3** Those who are to be the teachers, usually known as ministers or pastors over a congregation, will be greatly assisted by proper organization.

Corporation *de facto*.

**4** A well organized religious society or church can be considered as a corporation *de facto*. Quot. 724, 18, 22, 33.

Incorporated under the laws.

**5** To be a corporation *de jure* (in law) undisputable on all points, it is necessary to be incorporated under the existing laws of the State. Quot. 724, 20.

They are civil bodies subject to civil law courts.

**6** Incorporated religious societies are civil bodies politic and are amenable to ordinary courts and governed by the statutes under which they are organized, so far as statutory regulations are prescribed. Quot. 17.

They consist of the church proper and its temporal existence.

**7** An incorporated church consists of two distinct elements, to wit, the church proper and the incorporation which has relation alone to the temporalities of the institution. Quot. 15.

## Incorporation.

Incorporation. How obtained.

Incorporation is obtained from the civil authorities of the state through the legislative, executive or judiciary branch as prescribed by legislative enactment.

**8** In either case the organized aggregate body meets after due previous notice of purpose, time, place of the meeting and

9 decides upon the purpose, name and location of the corporation, the artificial body to be created. The persons authorized at this meeting to apply for incorporation and designated

10 as its first board of trustees, shall in due form of law in an application signed and acknowledged by them as their

By petition to the legal authorities.

11 act and deed and sworn to, set forth in clear unequivocal terms, the name, the purpose, the domicile or principal place of business of the corporation.

This application must be presented to the authorities by which the charter or certificate of incorporation is to be issued ,observing strictly the instructions of law or the legal authorities.

Charter recorded.

12 After the certificate of incorporation is issued or a charter is granted and is duly recorded in the public records kept for that purpose it is

The temporal affairs pass to the trustees.

in full force and virtue, and the temporal affairs of the incorporated church or religious society pass into the hands of the trustees named therein, and the title to the real estate, and all other property of the organism is in the corporation created. Quot. 493, 541, 545, 546, 550, 551, 9, 19, 21, 144, 146.

Agreements stated in application are basis of the compact.

13 The points agreed upon as stated in the application are the fundamental principles upon which all subsequent legislation by the incorporated body must be based, for it is the compact upon which the corporation is founded and the contract between its members. Quot. 14, 342, 26.

To be a branch of a denomination to be stated.

14 If the congregation is to be a subordinate branch of a larger denominational organization and subject to its rites, rules and regulations,

this should be stated in the application for and in the certificate of incorporation, so as to indicate clearly the denomination and the connection with it. Quot. 32, 7, 10.

To adopt by-laws.

**15** The corporation will be at liberty to adopt by-laws to regulate its local wants and conditions; these by-laws must, however, be in harmony with the laws, rules and regulations of the general body and not prohibited by the common law, or statutory law. Quot. 25, 32, 33, 237, 22, 23, 24.

How by-laws are adopted.

**15** To draw up a code of by-laws a committee of members of the congregation who are fairly acquainted with its wants and conditions should be appointed. When the committee is ready to report, a meeting of the congregation should be called for the consideration and the adoption of by-laws. To give every member a chance for due consideration of the matter, the by-laws to be presented by the committee should be read to the assembled congregation at the time the announcement of the meeting is made. Quot. 14, 31.

Not to engage in temporal business.

**16** Where a corporation without other authority than granted by an act in relation to incorporated religious societies engages in the business of banking for the purpose of receiving deposits and circulating money for others, such business comes within an act to prohibit unauthorized banking and a note discounted in the transaction of such business is illegal and void. Quot. 127, 283, 487.

Corporation by prescription and their rights.

**17** Every body united for religious or literary purposes, though without a written charter or law, is to be considered a corporation by pre-

scription, or by the usages of the common law of the state with all the incidents and attributes of a corporation by the principles of the common law, and entitled to all the rights which are conformable to the customs of the province. Quot. 33, 124.

### Church Membership.

How to obtain membership.

**18** The church being principally an ecclesiastical body, membership must be obtained as prescribed by the rules and regulations of the particular church you wish to join. Quot. 41, 43, 63, 44, 463.

To dissolve membership must be done as prescribed by law.

**19** Once obtained, membership becomes an individual personal right of which the member, lay or clerical, can not be deprived without notice, and an opportunity to defend and in accordance with the rules and regulations or customs of the body, or the rules of common law. Quot. 63, 65, 68, 463.

Covenants to submit to its laws and discipline.

**20** Every person entering into church membership, impliedly if not expressly, covenants to conform to its rules and submit to its authority and discipline. Quot. 57, 42, 62, 63, 71, 43.

Withdrawal dissolves membership.

**21** The association between a religious corporation and its corporators is voluntary on the part of the latter, and is dissolved by withdrawing from attendance on its worship, omitting to contribute to its support and uniting in the establishment of another like corporation. Quot. 51, 52, 54.

Withdrawal loses membership.

**22** What amounts to a voluntary withdrawal, is a question of law.

**23** The rights of a member, if expelled, are to be determined by the laws of the church. Quot. 53, 58, 64.

**24** If the minority of a church withdraw voluntarily they lose their rights, but not if they are compelled to leave by a majority. Quot. 59. Membership not lost if withdrawal is compulsory.

**25** What amounts to a voluntary withdrawal can be ascertained from decisions showing what is not a withdrawal. Quot. 50, 49, 52, 54, 55, 56. Not a separation.

**26** Where the fellowship in an independent religious society has been withdrawn from a member, at a regular meeting of a church conference, he is no longer a member and has no vote in a subsequent election. Quot. 61. Fellowship withdrawn dissolves membership.

### Trustees, Their Election or Appointment and Their Rights, Powers and Duties.

**27** Contributing members in good standing have a right to vote at the election of officers for the church in accordance with the customs, rules and laws of the church, local and general. Quot. 710, 92, 45. Contributors in good standing have a vote.

**28** Due notice must be given of time and place, when and where the election is to be held and the offices to be filled. Quot. 88, 89, 105. Due notice to be given.

**28** And also of the persons nominated if previous nominations are the rule or custom of the church. Quot. 98. Nominations. Pastor to preside etc.

**29** The pastor or some one appointed by him to preside, and appoint election officers, should be present. Quot. 263. Appoint election officers.

**30** The election officers appointed by the presiding officer are to decide on the right to vote, a vote accepted can not be thrown out afterwards. Quot. 94, 95. Election officers decide on right to vote.

In Episcopal church pastor presides.

**31** In the Episcopal Church the pastor is the presiding and returning officer, persons holding his certificate are *prima facia* elected to the office. Quot. 104.

Certificate must show notice was given.

**31** A certificate of election of trustees of a religious society which does not show the notice of time and place the election was held, is insufficient to show such election. Quot. 106.

Decision of classis final if no appeal.

**32** The decision of a classis or a similar judicatory as to the validity of an election of officers is final, if no appeal to a higher judicatory. Quot. 447.

*Quo-warranto* is the proper remedy for usurper.

**33** Equity can not enquire into the validity of election of officers of a church duly incorporated, and enjoin them from exercising the duties or enjoyment of the franchise of office, but the remedy is by *quo-warranto; quo-warranto* is the proper remedy against a person alleged to be usurping the office of trustee in a chartered church and not a bill in equity to enjoin him. Quot. 37, 115, 117, 118, 119.

Deposed member of a church still a trustee.

**34** The character of persons as members of a church corporation under the statutes is entirely distinct from their character as members of the church, and a decision of an ecclesiastical tribunal excluding such persons from the church does not effect their right as to the management of the temporal affairs of the corporation. Quot. 46.

Trustee leaving church and joining another.

**34** Where membership is a necessary qualification of trustees who are to manage the affairs of the corporation, a trustee, who withdraws from the church and joins a church of another denomination, which latter church prohibits a connection by its members with the former, will

be considered as having abandoned his office as trustee, and as having no further interest in the church he left. Quot. 113, 114.

Trustees in Baptist Church need not be communicants.

**34** Trustees of church property in the Baptist Church are not necessarily communicant members, excommunicated from communing membership does not disqualify them even if the excision be rightful. Quot. 106.

**35** In some churches trustees are appointed. Quot. 101, 178, 287.

Trustees appointed by court or the church authority.

**36** To prevent failure of trust, or on certain occasions, the civil courts or ecclesiastical authorities will appoint a trustee. Quot. 101, 301.

Court will raise other trustees if society diverts the property.

**36** Property vested in a religious society incorporated or not is a charitable use, whether the donor be one or many. The society are trustees and cannot divert the property from the use to which it was dedicated no more than other trustees. If they undertake to divert the fund, equity will raise another trustee to administer it according to the intention of donors or subscribers. Quot. 304.

Trustees hold till successors are appointed.

**37** The committee of an ecclesiastical society appointed as provided by statute to order the affairs of the society for the ensuing year, continue to hold their office after the expiration of the year until suspended by the appointment of another committee. Quot. 109, 110, 111.

Board of trustees in some churches.

**38** In some churches the vestry, consistory, session or deacons of the church are the board of trustees. Quot. 204, 226, 228, 229, 251, 116, 99.

Usage and customs of long standing are uncertain and lead to disputes.

**39** The relation of trustees is sometimes in some churches based on usages and customs of long standing which, however, is subject to differences of opinion, contradictory evidence leading to dissensions and litigations, which would be avoided by the adoption of by-laws bringing these matters to a fixed stability.

Trustees must meet as a board to act.

**40** The board of trustees of a religious society can alone bind the corporate body, and to execute this power they must meet as a board, so that they may hear each other's views, deliberate and decide; the separate action of the trustees individually without meeting and consulting each other as a board, though a majority in number should agree upon a certain act, is not binding on the corporation and can not itself create a corporate liability. Quot. 141, 142, 143, 132, 281, 328.

Trustees are the agents of the temporal affairs of the church.

**41** Religious societies are aggregate corporations, and whatever property they acquire, whether it be real or personal, is vested in the body corporate; and while the officers have under their dominion and control whatever possession they have, it is the possession of the artificial person (the church) whose agents they are; although they are called trustees, they do not hold the property in trust for the corporation or religious society. The name is simply the title of their office, and their position respecting the corporate property would be the same if they were denominated directors or managers. Their right to intermeddle is an authority, not an estate or title, they have no other possession than the directors of a bank have of the banking house. Quot. 133, 135, 189.

Must act by vote.

**42** Where a religious society is a corporation aggregate and has a board of trustees to manage its affairs, such society can contract only through the aggregate body by vote or through the board of trustees by vote, or through an agent authorized by vote of one body or the other. Quot. 281, 132, 141, 143.

Trustees to protect church property and how.

**43** Trustees *de facto* of an unincorporated religious society may maintain an action against a tresspasser for an injury to a meeting house of the society. Quot. 220. Church officials may maintain injunction proceedings to protect property controlled by the church. Quot. 175, 195.

Trustees to recover church property.

**43** An action to recover church property may be brought in the name of the trustees. Quot. 175.

Trustees can not sell or incumber real estate without permit from the congregation.

**44** A church can not be bound by the action of the trustees beyond the express powers granted by its members. Trustees of a religious corporation can not bind it by their covenant unless duly authorized, nor can they dispose of or incumber its real estate unless they are duly authorized. Quot. 140, 148, 203, 271, 351, 375, 21.

Civil Courts supervise the acts of trustees.

**45** The acts of the trustees are subject to the supervision of the civil courts. Quot. 370, 371, 453.

Can not close church against preacher.

**46** The trustees can not close the church against the duly appointed preacher. Quot. 483, 634.

Can not be removed without citation.

**47** Trustees can not be removed without citation and trial on charges made. Quot. 243.

Can not distribute the church property among the members.

**48** Trustees can not distribute property of the church among the membership. Quot. 205.

Trustees can rebuild church.

**49** Trustees can move or rebuild the church property. Quot. 200, 252, 272, 562.

Trustees have possession and custody of the property of the church.

**50** The trustees have possession and custody of the temporalities of the church, whatever the same may consist of, real or personal estate, they must therefore be considered *virtitute officii* entitled to the possession and lawfully seized of the ground and buildings belonging to the church. Quot. 134, 145.

Relation between the corporation, the trustees and the society.

**51** Where the trustees of a religious society have been incorporated the corporation so formed becomes a simple trustee of the society funds and property with powers to be exercised subject to the direction of the society, and the society becomes *cestuiqui* trust with both *jus habendi* and *jus disponendi.* Quot. 21.

## Property, How Acquired, Held and Protected.

Church property to be used as intended by its founders.

**52** The society are trustees and can not divert the property from the use to which it was dedicated, no more than other trustees. If they undertake to divert the fund equity will raise another trustee to administer it according to the intention of the donor or subscribers. When founders have expressed their intentions, that particular doctrines shall be taught, or a particular form of worship and government sustained, those having the management of the institution can not alter the purpose for which it was founded. Quot. 304, 330, 369.

How unincorporated societies are to hold property.

**53** Property for unincorporated religious society must be held by trustees. Quot. 492, 488. It is not necessary to the validity of a grant to an unincorporated religious society, that it should be made to the society or to the deacons or to

trustees by name, if it be made to "the trustees" of a society, so clearly as to distinguish it from all others, it is a valid grant; as, "to the trustees of the United Society in Harward." Quot. 491, 508.

How the church is to instruct its trustees.

**54** The manner in which a religious society as *cestuiqui* trust may appropriately exercise its power of directing its trustees in the question of sale or incumberance of church property depends upon the established rules and regulations of that particular society. Quot. 375, 271, 272, 273, 274, 275, 373, 376, 378, 380, 381, 385, 386, 392.

Repudiation of sale.

**55** When a religious corporation seeks to repudiate an unauthorized conveyance of real estate and recover possession, it will be required to restore to the purchaser all he has paid upon faith upon the supposed title and of the enjoyment of the property. Quot. 388, 387.

Ratification.

**56** Ratification of a debt, obligation, mortgage or contract. Quot. 389, 390.

Proper form of conveyance.

**57** In case of a conveyance by an incorporated religious society pursuant to a decree of court, the trustees' individual names should be inserted as grantors in the body of the deed, with the addition of the words "trustees of" followed by the name of the society, and the granting clause should witness that the parties of the first part as trustees of, for and by the society's direction, for the agreed consideration have bargained, sold, etc. The concluding part should show that "the parties as such trustees as aforesaid have hereunto set their hands and seals" or their official style should be added to their signatures, and the individuals should acknowledge in their proper character as trustees. Quot. 391.

May be used for trust deed or mortgages.

**58** The foregoing form can be followed in a conveyance authorized by the congregation or in a trust deed or mortgage so authorized. If the president and secretary are authorized, their individual names and style of office should appear instead of that of the trustees.

Must be previously authorized.

**59** The parties executing the deed or mortgage must be previously authorized thereto by the church assembled in congregational meeting, duly called as prescribed by general custom, the rules of the church, or the common law. Quot. 375, 376.

Power to purchase land restricted.

**60** The powers to purchase and hold real estate for the use of the church or other pious uses conferred upon incorporated religious societies must be restricted as to the pious uses for which the land may be held to such uses as are comprehended within the general object for which the society was incorporated. Quot. 266, 267, 487, 591.

A conveyance of land to a religious corporation after it has taken all the lands allowed by law is void. Quot. 586, 587.

Restriction to 20 acres does not apply to Y. M. C. A. in Ohio.

**61** Does not apply to Y. M. C. A. Quot. 587.

Applies to a single society.

**62** The statute prohibiting a religious society from holding more than 20 acres applies to a single religious society, and not to a denomination. Quot. 581.

Bequest in California is void.

**63** Under the civil code of California no religious body, corporation or society can take under a will, and the bequest of money is void. Quot. 588.

Restriction in Maryland.

**64** The declaration of rights (Maryland) which declared, that every sale of land to a religious body without leave of the legislature

should be void, except sales for not more than two acres to be used for a meeting house or burial ground, imposed no restriction on the power of the legislature in granting such leave, but authorized it to declare limitations or not in its discretion both as to the extent and quality of the estate to be purchased and the purpose for which it should be used. Quot. 593, 597, 598, 603, 604, 605, 606, 727.

**65** A board of foreign missions is not a church, congregation or society formed for the purpose of religious worship within the meaning of Illinois statute forbidding such societies receiving by gift, devise or purchase more than ten acres of land. Quot. 354, 585, 595. Restriction in Illinois.

**66** The constitutional and statutory provisions of West Virginia prohibiting the holding of land by any church or religious denomination were not intended to, and could not if they were so intended, affect the right of an owner of land in that state to convey or devise it in trust for sale for the benefit of a foreign religious denomination (federal court decision). Quot. 480. West Virginia.

**67** Act of Assembly (Delaware) provides that religious society can take land only by deed. Held that the proceeds of a sale of land are to be considered realty, and a bequest to a church of money to arise from the sale of real estate is therefore void. Quot. 589. Delaware.

**68** The act of congress July 18th, 1862, provides that no association for religious purposes shall acquire or hold in any territory of the United States real estate of a greater value than $50,000. Quot. 583. U. S. Territory.

Abandonment of church property.

**69** Abandonment of church property under different aspects. Quot. 570, 573, 577, 578, 741, 617.

Use of property on dissolution of congregation.

**70** A testator devised property to the trustees of the First Presbyterian Church of Northern Liberties of Pittsburgh commonly called the Fourth Presbyterian Church of Pittsburgh for a religious use. Held that a conveyance of the property upon dissolution of the church, in trust for the presbytery of Pittsburgh, could not be questioned by testator's heir. Quot. 299, 300, 301.

Title to land by adverse possession and disseizen.

**71** A religious corporation may obtain title to land by adverse possession thereof. Twenty years of naked possession of land by a religious corporation gives it an absolute title in fee simple. Quot. 526, 527, 528, 529, 530, 531, 532, 533, 534, 481.

Roman Catholic bishop has a dry trust.

**72** A Roman Catholic bishop is a mere dry trustee of the properties owned by the various congregations of the diocese and as such has no interest in the estate nor power to control it or direct its management, he is simply the passive, silent depository of the legal title and nothing more. Quot. 718.

Bishop controls erection of church.

**73** Bishop of Roman Catholic Church has complete authority in regard to the erection of the church edifice. Quot. 194.

Control of personal property.

**74** Personal property of a church is controlled by trustees; it can not be removed without their consent. Quot. 259.

Action for damages burning or injury to building.

**75** In an action by the trustees of a religious society for the negligent burning of a church, the court will not inquire into the ecclesiastical standing of the trustees, nor as to their relation

to the general conference of the religious denomination to which they belong, or have belonged. Quot. 173, 220.

Disturbers to be removed from church building.

**76** The vestrymen of a church have power to preserve order and remove disturbers from the meeting of a church. Quot. 186. A sexton conducting a funeral in a church building may lawfully remove therefrom an undertaker who is there in violation of the rules of the church. Quot. 187.

Trustee can not be sued by co-trustee for trespass.

**77** A trustee of a religious society can not be sued by his co-trustees, as a trespasser in relation to the property of the society, as his possession is the possession of his co-trustees and his rights are equal to those of the others. Quot. 610.

Forcible entry is trespass.

**78** If members are improperly excluded by the deacons from the use of the church property, they must apply to court for redress or appeal to the congregation. They can not resort to acts of trespass to gain entrance to the church. Quot. 607, 608, 609.

Damages for disturbing use of the church.

**79** A religious corporation may maintain an action against a railroad corporation for nuisance in disturbing the use of a church, and damages may be given not only for the depreciation of the value of the property, but for the discomfort and inconvenience caused to the congregation and tending to destroy the use of the building for church purposes. Quot. 238, 239.

Management to be directed by majority, minority to be restrained by injunction.

**80** Where the supreme government of an incorporated religious society in the management of its affairs is vested in the congregation, the action of the majority of the congregation on any question affecting the management and di-

rection of the temporal affairs and property, controls, if the authority is exercised in a regular lawful manner. Injunction is the proper remedy to restrain unlawful interference with the property of a religious society by a minority thereof. Quot. 326.

Orders and judgments of a general organization bind local churches.

**81** Where a local church congregation is a member of a general organization having general rules for the government and conduct of all its adherents, congregations and officers, the orders and judgments of the general organization through its governing authorities as far as they relate to church affairs and church government are binding on the local congregation, and will not be re-examined by the courts. Quot. 311.

### Donations and Bequests.

Bequest to unincorporated society valid in Mass. and Penna.

**82** A legacy to an unincorporated religious society for the purpose within the object of its organization is valid under the laws of the Commonwealth of Massachusetts. Quot. 489; also in Penna. 515.

Bequest to be enforced in equity.

**83** Where property has been given in trust for a church, any incorporated congregation, being one of which the church consists, may come into court of equity and enforce the execution of the trust. Quot. 556.

Bequest must be within capacity to take.

**84** In general a bequest to a religious corporation fails if the legatee is not capacitated at the testator's death. Quot. 590.

Property donated by way of trust.

**85** Property may be dedicated by way of trust for the purpose of sustaining definite religious doctrines, and it is the duty of courts to see that such property is not diverted from the trust to different uses. Quot. 495.

**86** Donation of a house for parsonage can be replaced by a better one. Quot. 504. Donation of parsonage.

**87** A grant of land to an incorporated religious society in trust for the support of a minister of the church is within pious uses for which religious societies are empowered to purchase and hold real estate, and a deed to an incorporated church in trust to apply the rents and profits to the maintenance and support of the minister of the church for the time being is valid. Quot. 264. A grant for support of minister is valid.

**88** A religious corporation of Pennsylvania can be a trustee for the heir at law of the testator who devised lands to it for uses that were void. Quot. 265. A religious corporation can be trustee.

**89** The receipt of money under a will and the institution of legal proceedings to recover it are not to be regarded as the exercise of corporate franchises such as are forbidden by statute, to any but domestic corporations. Foreign religious corporations, therefore, are entitled to recover bequests made in their favor by a testator in this state. Quot. 599. Foreign corporation can recover bequest.

**90** The statutory restriction on the amount of land that may be held by a religious corporation can not be extended by implication to apply on unincorporated religious societies. Quot. 595. Bequest to unincorporated society not restricted.

**91** A devise of an entire estate consisting of both real and personal property was not violative of code 1904 forbidding churches from taking a devise of realty where a portion of the real estate was to be devoted by the church to other purposes and its beneficial interest could not be satisfied out of the personal. Quot. 728. Devise of a whole estate, part of it in trust valid.

Trustees to decide if congregation can be organized.

**92** Where a will directed the executor to erect and transfer a church to the Presbyterian Church provided a nucleus of a congregation could be found in the neighborhood, the church trustees and not the executors were the judge whether there was a sufficient number of persons to organize a church. Quot. 197, 520, 571.

Legal successors to a religious society.

**93** A gift of land made to A and B for the use of a certain religious society and such that may succeed them forever, holding the same principles, is not merely to the society then existing, but if that ceases to exist or be of the same faith, the gift then to any other society holding the same faith which may succeed them. Quot. 512, 510, 516.

Those adhering to the ecclesiastical government, are the rightful successors.

**94** In case of a devise to a church which is claimed by two societies, it is the duty of the court to decide in favor of those, whether a minority or a majority of the congregation, who are adhering to the ecclesiastical government of the church which was in operation at the time the trust was declared. Quot. 315.

Domicile of legatee decides capacity to take.

**95** A testator domiciled in New York donated $5000 to a Congregational church in the town of S. County of W. Massachusetts. It appears that there was such a religious body, but that it was not incorporated. By the laws of Massachusetts certain officers of a religious society, which the church in question possessed, are bodies corporate for the purpose of taking donations to their church. Held that the capacity of the legatee to take being governed by the laws of its domicile the legacy was valid. Quot. 600.

Bequest can not be assigned.

**96** A bequest to an auxiliary unincorporated society, assigned to a parent society which was

incorporated, can not be sustained in favor of the parent society. Quot. 602.

Special legislation prohibits bequests to religious societies in some states, to be considered before drawing a will.

**97** The foregoing citations on donations and bequests to religious societies illustrate the general rules established by the courts. Special legislations restrict or prohibit such donations and bequests in some of the states. These special legislations should be inquired into before drawing a will.

**98** An incorporated church is by law made an artificial person and as such capacitated to take and to hold like a natural person. Quot. 17.

Unincorporated society can hold under a trustee.

**99** An unincorporated society not having that capacity can take and hold as a rule, only by, through or under a trustee or trustees named. Quot. 478.

A change from Unitarian to Trinitarian forfeits bequest.

**100** A legacy to a church and society as long as they maintain the present essential doctrines and principles of faith and practice, "which was unitarian," is forfeited by a change to a trinitarian system of faith and practice. Quot. 278.

Land reverts to donor if purpose fails.

**101** A grant of land given to a church society for the use and purpose of a church and graveyard is a grant for that special purpose, and when that fails the land reverts to the donor and his heirs. Quot. 574, 575, 503.

Land on which church was built and burned does not revert.

**102** A testator donated certain lands to a particular church. The church built on the land burned down. Held that his heirs could not reclaim the land on the ground that the trust had ceased. Quot. 571.

In suit brought parties can be changed by amendment.

**103** In a suit to establish a will making a devise to a voluntary religious association afterwards incorporated, brought by the church as a

corporation, the trustees for and in behalf of the members may be substituted as plaintiffs by amendment, striking out the name of the party. Quot. 288.

Suit to compel payment of legacy.

**104** In a proceeding by an incorporated religious society to compel payment of a legacy to itself, the objection can not be made that the society had lost its corporate existence by non-user or failure to keep up its church organization. Quot. 566, 565.

## Taxation of Church Property.

Property used entirely for public worship is free from taxation.

**105** Property used directly, immediately and exclusively for religious purposes is exempt from taxation without regard to the question of direct ownership. This is the accepted rule in all states, but the courts and legislatures differ in their definition of taxation.

Free from municipal claims in Penna.

**106** In Pennsylvania the act of June 4, 1901 declares that public property used for public purposes shall not be subject to tax claims or municipal claims; and actual places of religious worship, places of burial, not used for private or corporate profit and institutions of purely public charity shall not be subject to tax claims or municipal claims, except for removal of nuisances, for sewer claims and sewer connections or for the curbing, paving or repaving of the foot way in front thereof. Quot. 660, 663, 667, 668, 669, 689, 686, 676, 677, 680, 681, 684, 685.

New York City free from water rent.

**107** Law of 1907 provides that religious corporations shall receive water free from the City of New York for the purpose for which it is used at the time of the enactment of the law. Quot. 714.

**108** Parsonages are subject to taxation in some states, and in some they are free from taxation. In some states money at interest or property, the income of which is altogether used for benevolent or educational purposes, are exempt, in other states they are not. The general index is tabulated by subjects and by states on taxation so that the desired information can readily be found. In some states ministers are exempt from taxation or their taxation is limited. Quot. 666, 668, 676, 688, 656, 659, 680, 692, 695.

Money at interest.

Ministers.

**109** Washington and Jefferson College of Washington County, Pa., was incorporated for the advancement of literature and science, morality and religion, without regard to sect or creed, by the education of youth of male sex in classical learning etc. In reply to the inquiry by the Board of Revenue Commissioners as to the propriety of granting the application of W. for exonoration of the tax levied on mortgages and judgments constituting the endowment fund of the college, the Attorney General held, that said mortgage securities were not liable to state taxation under existing laws, the opinion being based upon the assumption, that the interest accruing upon the investments was used for the purpose of the institution as intended by the legislature in the act of incorporation. Quot. 652, 665.

Securities for loans from endowment fund not taxable.

**110** A charitable institution, even if it were a purely public charity, could not hold land in another county from which revenue is derived free from taxation. Quot. 653.

Land held in other county taxable.

**111** "In an actual use" means in exclusive use, and a mere concurrent or alternate occupa-

Meaning of actual use.

tion by the church does not come within requirements for exemption. Quot. 654.

Not used directly taxable.

**112** Property not used directly for the purpose and in the operation of the charity, for profit, is not exempt, and the devotion of the profits to the support of the charity will not alter the results. Quot. 655.

Ground taxable while building.

**113** Ground upon which church is being built is not exempt from taxation. Quot. 670, 664, 662.

### Liabilities of a Church.

Church liable for money borrowed to build church.

**114** Though a note given by the trustees of the M. E. church to raise money to build a church was signed by them individually without any official designation so that it may be negotiable, the obligation was of the church, and the church premises might be sold under execution to pay it. Quot. 152, 154, 401, 402, 407.

Church liable on contract ratified.

**115** Where a building committee of an unincorporated religious society consists of five members and one of them assumes authority to make a contract on behalf of the committee and afterwards his contract is ratified by a majority of the committee, the result is the same as if his authority had been conferred originally, but no ratification will suffice unless it is attended with knowledge of all the material facts, or is made under circumstances from which such knowledge can be fairly assumed. Quot. 156, 157, 158, 225.

Church liable for money borrowed to rebuild church.

**116** The action of trustees of a religious society in giving their note for a debt incurred in rebuilding the meeting house, being for a necessary legitimate object, was within the implied

powers of the trustees, the society was liable for money had and received, though no such authority was actually granted to the trustees. Quot. 154.

**117** The trustees of an incorporated society alone can represent it in making a contract. Quot. 150, 151. Trustees alone can make contract.

**118** The trustees of a religious society will not be permitted to allow claims against the society which are barred by the statute of limitation. Quot. 149. Not to pay claims by statute limit.

**119** Where the majority of the trustees of a religious society execute a judgment note in the corporate name to persons who had a claim against the society constituting a lien on the church building and including in such note the amount of a certain claim in favor of such trustees personally against the society, apparently for the purpose of incumbering the church property and subjecting it to sale; held that it was fraud in fact, and in violation of their duty as trustees. Quot. 155. Trustees including personal claim in note is fraud.

**120** A member of a church building committee agreeing as one of the committee to pay for certain articles sent to him and used by him in the erection of a church, is personally liable for the value of them, where he did not expressly limit the extent of his obligation. Quot. 166. Member of building committee liable for his orders.

**121** A note given for church furniture signed by the deacons of an unincorporated society in their official capacity binds them individually and not the society. Quot. 167. Deacons liable for note given for furniture.

**122** A religious corporation is not liable for an overdraft in a bank account held by its treas- Society not liable for overdraft by treasurer.

urer without the knowledge or authority of the corporation, or board of trustees. Quot. 153.

Bond signed individually is the debt of the individuals.

**123** A bond executed in the individual names and seals of certain persons described as trustees of the Baptist church of the town of R. is the bond of such individuals and not of the society. Quot. 159.

Trustees took title to land in their own name were decreed to convey it to the church.

**124** Certain trustees of a church purchased land for the use of the church, taking title in their own names, without any agreement that it should be held as security for advances made by them, for the church, except a promise from the pastor. Held that such trustees would be decreed to convey the land to the church free from any trust; but without prejudice to their rights to enforce payment of debts in the same manner as other *bona fide* creditors of the church. Quot. 180.

Implied obligation.

**125** In a suit against the trustees of a church to foreclose a mechanics lien for work done and materials furnished, the complaint charged in effect that the services were rendered under the order and at the request of the church assembled as a congregation with the knowledge and implied consent of the trustees. Held good, as enough was shown to create an implied obligation upon the church as an organization, and hence sufficient as against the trustees. Quot. 209.

Report to conference no defense in suit for debt.

**126** In an action against a religious corporation, for money loaned, that the corporation reported to the conference of which it was a member, that they did not owe the debt is no defense. Quot. 284.

Not a valid defence.

**127** In an action against a church for a debt alleged to be contracted by its trustees, an answer

that when the debt was contracted it had no elected board of trustees acting for it, and that no trustees had ever been elected or qualified since, is bad, as trustees of a church may be appointed as well as elected. Quot. 287.

Not liable for trustees' or employees' neglect.

**128** A religious society is not held liable for trustee's neglect where it did not appear that he was acting within his authority, or performed a duty imposed upon him by the trust. Quot. 722, 218.

Ratification creates liability.

**129** Trustees of a religious society mortgaged its property to secure a loan from plaintiff and applied the proceeds to building a new house, which was occupied by the society when completed. The society knew of the mortgage, when the loan was made, but allowed the proceeds to be spent for its benefit without expressing any dissent to the plaintiff, and in an action to foreclose the mortgager could not claim, that the trustees had no authority to make it. Quot. 389, 394, 395, 396, 397.

Bishop can not make congregation liable.

**130** In an action by an architect against a bishop of the Roman Catholic Church, trustee of the congregation, for services rendered, an affidavit of defense is sufficient to prevent judgment, which avers that the congregation in question was incorporated and that the clergyman mentioned in statement of claim as having ordered the work had no authority to bind the defendants, and had not been authorized by them to pledge the credit of the congregation in question. Quot. 400.

Liability members of church not incorporated.

**131** The real debtors in the finding of an amount due from a congregation of an unincorporated church are the members of the church

at the time the debt was contracted, who can be shown to have in some way sanctioned or acquiesced in its creation. Quot. 76, 77, 75, 78, 79, 81.

Bishop not liable for priest's salary.

**132** A bishop is not personally liable for the salary of a priest whom he engages. Quot. 160, 163.

Building Committee not personally liable.

**133** Where a written contract for the building of a church edifice was entered into by the defendants as the committee of a religious society on its behalf and was subscribed by them as such, the intent be clearly to bind the corporation as principal and the facts of the defendants as agents, and the name of the principal and the facts of the defendants' agency as well as the want of individual interest of the defendants in the subject matter in the contract, all appeared on the face of said contract; these facts might be pleaded in bar of an action upon said contract against the members of the committee personally. Quot. 164, 165.

The congregation employing a sexton liable for his salary.

**134** A church accepting the services of a sexton is liable to him therefore, whether by-laws were observed in employing him or not, nor will the fact that an other party—as here the ladies of the Alter Society—agreed to contribute the half of his annual salary—defeat the recovery of the whole from the church employing him. Quot. 120.

Deacons not liable on contract made by others.

**135** The deacons of an unincorporated religious society who are *ex-officio* agents for the management of its property can not be held personally liable on a contract made by other agents of the society, unless it is clear that the former participated in the appointment of the latter or in some way ratified such contract. Quot. 162.

**136** Where expenditures and disbursements were made in good faith for the erection of a house of worship even though such expenditures may exceed the amount of the trust, if it appears that they acted in good faith with reasonable prudence, they should be re-embursed and the amount paid charged up to the trust estate. Quot. 121.

Expenditures made in good faith with reasonable prudence to be re-embursed.

### Denominational Connection.

**137** In an action to determine the rights of plaintiffs as trustees of a church as a branch of the African Methodist Zion's Church that for 28 years has sent delegates to and received its ministers from the conference of that connection, had conformed to its discipline and had paid the charges assessed by the conference, the church must be considered as belonging to that connection, and trustees elected in a manner prescribed by the discipline are lawful trustees of the church. Quot. 100, 248.

Conformed to discipline.

Lawful trustees of a church.

**138** Where religious organizations have subordinate branches, the subordinate can not dissolve its connection with the principal without permission. Quot. 235.

Subordinate church can not dissolve its connection.

**139** Where a local church congregation is a member of a general organization having general rules for the government and conduct for all its adherents, congregations and officers, the orders and judgments of the general organization through the governing authorities, so far as they relate exclusively to church government, are binding on the local congregations and will not be re-examined by the courts. Quot. 232, 442.

Congregation denominationally connected is bound by the orders and judgments of the general organization.

Congregation can by unanimous vote dissolve connection.

**140** A congregation which by unanimous vote of its members has withdrawn from the classis and synod with which it had been connected and becomes independent, retains the right to elect its own minister, elders and deacons, who are the trustees of the congregation; and the classis to which the congregation was previously subordinate has no power to remove the officers so elected. Quot. 233, 230, 275, 277.

Congregation can not ratify act violative of adopted principles.

**141** The property of a church is held in trust for the promulgation of the doctrine thereof and the title to the church property is in that part of the congregation which is acting in harmony with its laws and principles, and a majority can not ratify acts violative of the adopted faith of the church. Quot. 237, 217.

Majority can not change purpose for which property was purchased.

**142** A majority of the society could not change the purpose for which the property was purchased by adopting the different doctrine of a different church and procuring a corporate name. Quot. 276.

Lutheran Church connection.

**143** The synod of the Norwegian Evangelical Lutheran Church of America is not a union of the several local congregations, as one church with one governing head, but is rather a confederation of self-governing churches acting as an advisory body, and the withdrawal of a local church is not a violation of any rules of said church or any rule of the synod authorized by the church. Quot. 212, 213, 214.

Denominational name expresses the purpose.

**144** Where a society of a particular religious sect or denomination is formed with a strictly sectarian or denominational name descriptive of the fundamental doctrine of the sect to which it belongs, the presumption is, that it was constitut-

ed for the purpose of promoting the vital and fundamental doctrines of that sect or denomination. Quot. 12, 336.

Connection is inferred from circumstances.

**145** The connection of a religious society with the ecclesiastical authority having rule over it is inferred from the circumstances of each case. No written constitution is necessary to bind the society to acknowledge such government. Quot. 412.

Union of two churches is an ecclesiastical question.

**146** Where the highest judicatories of two churches determine that the creeds and doctrines of the two churches do not present such fundamental differences, that would bar a union of the two churches, the civil courts are bound by such decision whether right or wrong. Whether the organic laws of the church authorize the reunion of that church with another rests upon the construction of the constitution of such church, its ecclesiastical standard and doctrines and history of the church from its organization, and is a question for determination by the highest tribunals of the church, the decision of which is binding on the civil courts. Quot. 612.

### Pews and Pew-Holders.

Pew-holders' church.

**147** Where a church building was erected with the proceeds of a sale of pews and the pew-holders and their successors became members of a voluntary unincorporated religious society the expenses of which were met by taxes and rentals on pews, the pew-holders under the constitution being the society, the title and beneficiary interest in the church is in the pew-holders. Quot. 73.

Pew-holders' right subject to rights of the society.

**148** A pew-holder's right is only a right to occupy his pew during public worship, and is subject to the right of the church society to have

the meeting house where it will best accommodate the whole. Quot. 257, 210, 537.

Pew-holders cannot prevent changes in meeting house.

**149** Pew-holders have merely a qualified usufructuary right in their pews subject to the rights of the religious society to remodel them, and to alter the internal structure of the building or enlarge or remove it or sell the edifice and rebuild elsewhere. Quot. 618, 619, 920, 537, 719, 721.

Pew-holders' remedy for damages is by action at law.

**150** Where a pew-holder is deprived of his pew for convenience or expediency and not from necessity, his remedy is by an action at law for damages. Quot. 720.

Executors of pew-holder pay no rent after death of pew-holder.

**151** Executors of pew-owners are not bound to pay pew-rent accruing after owner's death; remedy of the church in such case is by sale of the pew. Quot. 621.

Pew-holder can maintain trespass.

**152** Although others may so far obtain possession of a meeting house as to oust the society, yet a pew-holder may maintain trespass for the first invasion of his individual rights to his pew after such ouster. Quot. 623.

### Ecclesiastical Judicatories.

Power to make rules and regulations that are obligatory.

**153** Voluntary religious associations and churches organized to assist in the expression and dissemination of religious doctrine may, by their governing bodies, prescribe rules and regulations for the government and discipline, and such rules and regulations will be obligatory on the members, congregations and officers of such general association, and will be given effect in the civil courts. Quot. 410, 411, 412, 311, 232, 343, 442, 447, 446, 445.

A judicatory excommunicating a pastor must have proper authority to do so.

**154** Where it does not appear that a general council composed of representatives of local churches of a sect, was ever legally organized, or if it was, that it was vested with any authority over the local churches either by direct action of the churches or by the action of the legally authorized representatives thereof, its action excommunicating a pastor of a local church for propounding certain doctrines, would be no ground for enjoining the pastor and his followers among his congregation from using the church property. Quot. 72, 463.

Civil rights to be decided by civil courts.

**155** Where a civil right depends on an ecclesiastical matter, its determination is for the civil courts, though such courts try only the civil rights, taking the ecclesiastical decisions out of which the rights arise, as they find them. Quot. 464, 475.

Decision of ecclesiastical tribunal on ecclesiastical matter binding on civil courts.

**156** A decision of a lawfully constituted judicial, legislative, and administrative tribunal of a church denomination, in regard to ecclesiastical matters, is, unless shown to be clearly and manifestly repugnant to the established laws of the denomination, binding and conclusive on the civil courts. Quot. 440, 725, 343, 409, 427, 428, 429, 448, 449, 302, 431.

Persons sitting in a lower court can not be members of the appellate court.

**157** Under constitution of a church providing that no one who participates in the trial by which a local society expelled a member, shall sit as a member of the appellate tribunal, a member of a local society who attended throughout the trial but abstained from voting, because she did not want to vote, and a member who was present at the commencement thereof and merely held up his hand to respond to a request by the expelled member has no vote in the appellate

court; for all persons who did not vote, to indicate it, are inelligible for the appellate court. Quot. 424.

Appellate courts to be organized according to established rules.

**158** The supreme tribunal of a religious denomination will be enjoined from expelling a member of a local congregation for alleged spiritual offenses when it appears that such tribunal has not been organized in conformity with the organic law of the church. Quot. 424.

Governing body can dissolve a church and take charge of its property.

**159** Religious incorporation law of New York State authorizing the incorporated governing body of a religious denomination to dissolve a church over which it has ecclesiastical jurisdiction and take possession of the property of the church and manage the same is within the power of the legislature to dissolve corporations and resulting trusts and to provide for custody and control of the property dedicated in perpetuity to religious uses. Quot. 329.

Vestry are the governing body in Episcopal Church.

**160** The vestry of Trinity Church corporation are the governing body of such church and exercise all corporal power and are the sole managers of the corporation in respect to its temporalities. Quot. 226.

Congregation may terminate office of trustees.

**161** The office of trustee of a church body is not one coupled with such an interest that the church body in its corporate capacity may not at a meeting of its members duly called and held, terminate the tenure of such office. Quot. 227.

### Jurisdiction of Civil Courts.

The civil courts will control the action of churches where rights of property or individual rights are in question.

**162** The civil courts will control the action of churches or religious associations, where rights of property or individuals are concerned, but have no jurisdiction over doctrine or rules of faith of the society as such. Where, how-

ever, rights of property are dependent on adherence to a teaching of a particular religious doctrine courts will examine, what as a fact that doctrine is, and whatever as a fact the persons interested adhere to or teach. Quot. 453, 454, 455.

**163** The Supreme Court of the United States holds, that controversies in the civil courts concerning property rights of religious societies are generally to be decided by a reference to one or more of these propositions:

1st—Was the property or fund in question devoted by the express terms of the gift, grant or sale by which it was acquired, to the support of any specific religious doctrine or belief, or was it acquired for the general use of the society for religious purposes with no other limitations?

2d—Is the society which owned it of the strictly congregational or independent form of church government owing no submission to any organization outside of the congregation?

3d—Or is it one of a number of such societies united to form a more general body of churches with ecclesiastical control in the general association over members and societies?

In the first class of cases the court will, when necessary to protect the trust to which the property has been devoted, inquire into the religious faith and practices of the parties claiming its use and control and will see that it shall not be diverted from that trust.

If the property was acquired in the ordinary way of purchase or gift for the use of a religious society, the court will inquire who constitutes that society or its legitimate successors, and award to them the use of the property

In the case of the independent order of the congregation, this is to be determined by the majority of the society or by such organization of the society as by its own rules constitute its government.

In the class of cases in which property has been acquired in the same way by a society which constitutes a subordinate part of a general religious organization, with established tribunals, these tribunals must decide all questions of faith, discipline, rule, custom, or ecclesiastical government.

In all cases where the right of property in the civil courts is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government; and that has been decided by the highest tribunal within the organization, to which it has been carried, the civil courts will accept that decision as conclusive and be governed by it in its application to the case before it. Quot. 342, 458, 459, 460, 461, 469, 453.

Courts will protect the church property against diversion.

**164** Where property is conveyed to a religious society upon a specific trust, a court of equity will enforce such trust and prevent the diversion of the trust, and prevent the diversion of the property to other uses. Quot. 331, 483, 332, 324, 495, 370, 371.

## Ministers.

The call and installation or appointment to a pastorate, being an ecclesiastic matter, can be dissolved under ecclesiastical law only.

**165** The election of a minister and his call or his appointment to a pastorate is an ecclesiastical matter, but when he is once installed into office the tenure thereof becomes his individual personal right and property, it is terminable only in the manner and for the causes established by law *ecclesiae;* a court of law can not determine what

acts or omissions will create a forfeiture, but a court of equity will at the motion of the society oust a minister who has been deposed by his denomination, and whom the trustees insist upon retaining. Quot. 650.

Those aggrieved can not appeal to civil courts, but the court will examine if it was done regularly.

**166** A deposed minister or an excommunicated member of a church can not appeal to the courts for redress, but must abide by the judgment of their own judicatories as final and conclusive. Where a member of a religious society is expelled or a minister deposed and he deems himself aggrieved in his rights of property thereby, the court will examine the judgment of expulsion, to see if it has been regularly made on due notice; if not, will disregard it and will give proper relief. Quot. 448, 628, 371.

Effect of decision of ecclesiastical council.

**167** Where a minister and his parish submit their controversy between them to an ecclesiastical council, the decision of such council, if not impeached for good cause, is a justification of the party conforming to it, though it does not *ex proprio* vigor, operate as a judgment. Quot. 638, 627, 626.

Congregation can dismiss pastor in Baptist Church.

**168** Under the policy of the Baptist Church the congregation is supreme, and a majority of the members thereof may at a regular meeting properly called dismiss the pastor without notice, or trial on charges. Quot. 631.

Minister in the Episcopal Church can not be removed without consent of bishop.

**169** When a minister is called and settled in a charge of the Protestant Episcopal Church, unless something to the contrary is distinctly expressed in the call or settlement, he can not according to the rules of the church be dismissed without his consent, except by the bishop. Quot. 646, 640, 636.

Church may discharge minister but is liable for breach of contract.

**170** A church may discharge its pastor during the term of his contract so as to render him a trespasser in case he afterwards enters the pulpit, though it may be liable to him for breach of contract. Quot. 637.

Call accepted and confirmed make the contract between pastor and congregation.

**171** According to the usages and discipline of the Presbyterian Church in the United States the call of the congregation for the services of a regular pastor and the proceeding of the parties under it are subject to the decision of the presbytery having jurisdiction, and the regular pastoral relation is constituted by the presbytery after the due acceptance of the call by the candidate. This usage is in harmony with Gen'l Stat. 1878, relating to religious corporations which vests the sole authority to ascertain and fix the salary or compensation to be paid to a minister in the society or congregation. Until due acceptance of a call by a minister no civil contract for the permanent employment as regular pastor at a stipulated compensation can be formed or made obligatory upon the congregation. Quot. 635, 651.

Ministers in the M. E. Church are appointed by conference.

**172** It is no objection to a deed conveying property in trust for the use of a local religious society that it sanctions the appointment of a minister thereof by other mode than by election by the congregation, it being a regulation of the Methodist Episcopal Church that ministers shall be appointed by the conference. Quot. 544, 418.

Causes for forfeiture of ministerial office.

**173** Every Congregational minister may forfeit his office by certain malfeasances. There are three established causes of forfeiture. An actual change of doctrine, a wilful neglect of duty, and third, immoral and criminal conduct. Quot. 645.

Employment by illegal vestry.

**174** Where the election of a church vestry is illegal and a minister employed by them has no notice of the illegality, he will be entitled to the stipulated compensation. Quot. 641.

Vestry can not reduce salary of rector.

**175** The vestry men of a parish can not indirectly remove a rector canonically called by reducing his salary as fixed at the time of his election. Quot. 640.

Assumpsit for salary.

**176** A clergyman may maintain assumpsit against his church for his salary. Quot. 633, 406, 637.

Can not close church against preacher.

**177** Where the trustees of an M. E. church without right, but with the wish of the majority of the members close the church against the duly appointed preacher, they may be restrained by injunction. Quot. 634.

Teaching and preaching is ecclesiastical matter.

**178** Where the minority of a religious congregation claim that the pastor employed does not teach the faith of the society, they must appeal to the supervising tribunal of the church. Quot. 630.

Voluntary contribution to a preacher.

**179** No religious teacher or minister can be enjoined from receiving voluntary contributions though he has been deposed by some ecclesiastical judicatory. Quot. 643.

Parish holds title to land not connected with the parsonage.

**180** Every minister settled over a parish is a corporation sole, or a corporation composed of one person, and he holds the parsonage land in fee simple as a sole corporation in the right of his parish or church; and on his resignation, deprivation, or death the fee is in abeyance until there is a successor. If a minister or his predecessor be disseized of the parsonage, he may enter, if his right of entry be not taken away, and

declare upon his own seizen or upon that of his predecessors, according to the nature of the case, and where a minister was settled in a town, and upon his decease a successor of the same denomination was settled, he will succeed in all the rights of the former and can recover the lands which belong to the parish. A parish, however, may be seized of land for the purpose of maintaining a minister out of the proceeds of it, and yet it may not be the property of a minister so as to make it technically the parsonage and cause the seizen to be in the minister as a sole corporation. Quot. 649.

Property for maintenance of minister not taxable.

**181** Connecticut Statute of 1702, exemption from taxation, property given for the maintenance of the ministry of the Gospel extends to money at interest given for that purpose. Quot. 702.

Minister in Mass. exempt from taxation.

**182** Where one claims the benefit of statute of 1811, Mass., granting exemption from taxation to all ministers ordained agreeably to the usages of the sect or denomination to which they belong, it is sufficient for such minister to be settled over a religious society, though it is composed of members resident in several towns. Quot. 704, 705.

New York State minister exempt from taxation on $1500.

**182** In New York State, one is entitled to exemption of $1500 given by statute to a minister of the Gospel who for 35 years was such, and who since for fifteen years has withdrawn from active duties of his calling owing to age and infirmity, not having, however, embraced any other occupation. Quot. 707.

Minister liable to indictment.

**183** The liability of a clergyman in the Protestant Episcopal Church to indictment and con-

viction in the civil courts for an offense charged in an ecclesiastical proceeding against him in a diocesan court forms no bar to the proceeding in the latter court. Quot. 625.

Church property subject to pastor's salary.

**184** The church edifice and the premises on which it stands may be subjected to the payment of debts due from the church for the salary of its pastor. Quot. 406.

### Priest in Roman Catholic Church.

A Roman Catholic priest can not bring suit in the name of his congregation.

**185** A petition contained the following allegations: "The petition of the Roman Catholic congregation of St. Patrick of the city of New Orleans by and through their pastor duly appointed and acting as such, The Rev. Edward J. Fallon of the city of New Orleans, respectfully represents that etc." Held that there was not sufficient allegation of the authority of the pastor to institute suit in behalf of the congregation. Quot. 293.

Unwarranted without notice redress in equity.

**186** The removal of a priest by his bishop can not be interfered with by the court, if the action of the bishop was within the laws and authority of the Catholic Church. If removed without notice and unwarranted, he was not limited in his means of redress to an appeal to a superior church tribunal, but might resort to a bill in equity. Quot. 449.

Ex-communicated priest can not occupy church edifice.

**187** The trustees of a religious corporation organized in conformity with the canons and discipline of the Roman Catholic Church, had no authority to permit an excommunicated priest to occupy the corporation church edifice consecrated by its founders to religious worship according to the canons and discipline of the church. Quot. 182.

Roman Catholic priest occupies parsonage as a servant.

**188** A Roman Catholic priest in charge at the will of the bishop and occupying a dwelling house belonging to the church is a servant and not a tenant, and his right of occupancy ceases with his services. Quot. 639.

Bishop not liable for priest's support.

**189** No action lies in favor of a Roman Catholic priest against his bishop for salary or support for period his bishop refuses to assign him a charge. Quot. 163, 160.

Priest can not eject persons from sick room.

**190** A Catholic priest, although about to administer an office of his religion on a sick person at his request, has no legal authority by virtue of his priestly character forcibly to remove from the room a person lawfully there. Quot. 642.

## Diversion of Church Property and Secession.

Description of diversion courts will prevent it.

**191** A church endowed in connection with an ecclesiastical organization or in subordination to it, can not unite with another organization or become independent. A religious society incorporated or not is but a trustee of a charity, and a court of equity will prevent the diversion of the property held in trust. Quot. 306, 304, 308, 309, 310, 319, 320, 321, 322, 323, 324, 330, 338, 339, 345, 357, 369, 513.

To prevent diversion one can act.

**192** One or more members of a religious society may maintain an action in their own behalf for the benefit of all others who feel aggrieved, to enjoin diversion of the temporalities by the trustees. Quot. 239, 314, 325, 181.

It is the duty of the court to see that property is not diverted.

**193** Property may be dedicated by way of trust for the purposes of sustaining definite religious doctrines, and it is the duty of the courts

to see that such property is not diverted from the trust to different uses. Quot. 495, 308, 369, 370, 371.

**194** The applicants in this case have separated themselves wholly from the church organization to which they belonged when the controversy commenced. They now deny its authority etc. They have first created themselves into a new organization and have joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which I have examined the applicants in their present position have no right to the property or the use of it, which is the subject of this suit. Quot. 302, 303, 305, 355, 362, 370.

Persons leaving a church and joining a new organization are secessionists and lose all rights in the former.

**195** Under the act of 1855 pamphlet laws 328 confirming to every religious society, whether incorporated or not, absolute ownership in its property subject only to the condition that it shall not be diverted from the uses and trusts to which it may have been lawfully dedicated, a Roman Catholic congregation, owning real estate, the title to which was in the bishop as trustee for the congregation, could not be diverted thereof by the ecclesiastical rules and regulations of the church. Quot. 236, 330.

Church property can not be diverted from original purpose under an ecclesiastical rule.

**196** The conditional separation of members into two bodies with the consent and approval of a majority founded upon the contemplated division of the church property, the members still continuing their rights in the corporation, is not secession. Quot. 55, 245, 443, 452.

Not secession.

**197** Chattles given to a Baptist church which at the time of the gift is established at a place

Chattles can not be carried off by seceders.

can not be carried off by seceding majority. Quot. 361.

Seceder does not share in trust fund.

**198** Seceders from a religious society are not entitled to share in the benefit of a fund held in trust for the society. Quot. 362.

Seceders forfeit their right to all of the property.

Seceders from a religious denomination can not retain the funds in their own hands as trustees on the ground that they were members of the society when the funds accrued. Quot. 364, 365, 366, 367, 368, 369, 370.

### Miscellaneous Subjects

Can not charge damages in nature of mesne profits.

**199** In an equitable proceeding to determine control of church property where a decree is entered for plaintiff and defendants are not in possession, it is error to charge damages against them in the nature of mesne profits. Quot. 255, 240.

Property of a congregation divided in two congregations by act of presbytery; divided by proceedings in equity.

**200** Where a presbytery of the United Presbyterian Church is given authority to divide a congregation, neither of the two congregations they formed can maintain ejectment against the other to recover property belonging to the original congregation, but must sue in equity for division of the property. Quot. 279.

Lawful successor to the use of church property.

**201** Where property is acquired for general use of a religious congregation which is itself part of a large and general organization of some religious denomination, then, as long as any existing religious congregation can be ascertained to be the congregation or its regular or legitimate successor it is entitled to use the property. Quot. 352.

**202** There can not be a sect or denomination of religious persons without any common system of faith. Quot. 5, 32, 41.

A sect or denomination has a common system of faith.

**203** A duly incorporated church, owner of 130 shares in a building and loan association and entitled to vote such shares at an election for officers, may do so by a proxy duly authorized by a board of trustees. Quot. 234.

Incorporated church can issue proxy to cast vote on stock it holds.

**204** A district court is without jurisdiction to take property of a religious corporation out of the hands of a regular board of trustees and place it in the hand of a receiver as an incidental proceeding in a suit by the state for the forfeiture of the corporation charter. Quot. 472.

Court can not place property of a church into receiver's hands.

**205** Where there are two bodies each claiming to be the beneficiary of a trust, a court of equity may require them to interplead without compelling either to establish its right at law. Quot. 465.

Court can demand interpleader.

**206** Though the members of a voluntary association contracting in its behalf become jointly liable, yet where a preacher contracting with the members of an unincorporated religious society for employment knows that the expenses of the church are raised by assessments or of voluntary contributions by the membership, the members are not liable *in solido*. Quot 77.

Members not liable *in solido* if preacher knows his salary is raised by individual subscription.

**207** It is not necessary that a majority of the members be present to constitute a corporate meeting of a religious society. Those present at a regular meeting constitute a quorum, and a majority of them can pass a resolution. Quot. 84.

Those present at a regular corporate meeting constitute a quorum.

**208** Where there is a definite body in a corporation the majority of that body must not only

Majority of definite body to be present.

exist at any time an act is to be done by them, but a majority of them must attend the assembly where the act is to be done. Quot. 93.

Form of bringing suit.

**209** A church organization can sue only in the name of ——— wardens and vestry men of ——— Church; or in the name of ——— trustees of ——— Church ———. Quot. 130.

How records and papers are recovered.

**210** On the refusal of the treasurer or clerk of a religious society whose term of office has expired to deliver records and papers of the society to his successor in office mandamus will issue on the petition of the society to compel him to do so. Quot. 146, 147, 298.

President and secretary can not bind the trustees.

**211** The president and secretary of an incorporated religious society have not implied authority to bind the society by a promissory note without authority from the board of trustees. Quot. 151.

**212** Trustees of a non-incorporated religious association have legal capacity to sue in behalf of such association, if not as trustees, as members thereof. Quot. 170, 171, 174, 190.

Contract between two factions for the sale of church.

**213** It is not essential to the validity of a contract between two factions of a church for the sale of a church property by one faction to the other, that the contract be authorized or actually entered into by a majority of all the members, where open conferences were held, there was no concealment and no member was prevented from attending such conference or otherwise denied participation therein. Quot. 221.

Roman Catholic bishop can not prevent society from action in corporate power.

**214** The refusal of a bishop of the Roman Catholic Church to recognize a society organized as a Roman Catholic Church society, does not

prevent the society and its officers exercising the powers of a religious corporation conferred by law nor prohibit its members from maintaining its religious worship. Quot. 223.

Poor fund to be used for that purpose.

**215** A fund collected for the use of the poor of the church can not be applied in the payment of its debts. Quot. 349.

Prayer meeting and Sunday School are divine services.

**216** Prayer meeting and Sabbath school are divine services within the meaning of a contract between two incorporated religious societies who had jointly erected a church providing, that each association shall be allowed "divine services therein." Quot. 360.

Personal property can be mortgaged.

**217** A religious society in the absence of prohibitory legislation has power to mortgage personal property to secure its debts. Quot. 385.

Mortgage due on dissolving connection.

**218** A mortgage to secure a debt to become due when mortgagor church should cease to be connected with the Presbyterian General Assembly is not contrary to public policy on the ground that it is a restraint on religious belief. Quot. 398.

College property held for payment of contract made by synod.

**219** A corporation chartered for the purpose of holding title to a college building and property erected and maintained by a religious denomination is bound by contracts made by the synod of the denomination for the erection of the building, the synod being a shifting unincorporated body which, however, controls the denomination. Quot. 407.

How suit to be compromised.

**220** When a church and society are an existing organization acting in a collective *quasi* corporate character an agreement of compromise of a suit by a majority of members is binding upon the minority. Quot. 408.

Constitution is the compact by which society is conducted.

**221** A voluntary religious association owes its existence to the compact between the members composing it, and when a written constitution is adopted, the constitution is the embodiment of the compact by virtue of which it is to be conducted. Quot. 224.

Money borrowed from church must be repaid.

**222** Where one borrows the funds of a church or becomes the security for one who does so, there is no rule of public policy to prevent recovery of the money. Quot. 249.

Money subscribed for a building must be paid. Suit to be brought in corporate name.

**223** Moneys subscribed for the rebuilding of a church edifice are subscribed for the benefit of the corporation and belong to it. A suit for the recovery of such money should be brought in the corporate name, the corporation being the real party in interest. Quot. 290.

Use of surplus fund on dissolution.

**224** On dissolution of a religious corporation the surplus funds from a legacy should be disposed of in the manner the court believes to be in harmony with the will of the contributors of the fund, could they have foreseen the event. Quot. 300.

Copy of record to be furnished.

**225** In case of a contest in court, copy from church book in possession of one party must be furnished to the other party. Quot. 323, 339.

First society to have parish property.

**226** A town not divided into ecclesiastical societies acquired land for ecclesiastical purposes. Held, that the land on division of the inhabitants of the town into societies belonged to the first society in the town. Quot. 340.

Synod can dissolve, depose and reorganize presbytery.

**227** Under its legislative powers a synod may dissolve a presbytery and assign its churches to some other presbytery. Under its judicial power it may for proper cause in due form depose a

presbytery, dissolve churches and reorganize them. Quot. 414, 415.

No limit of time for inquiry into offense against discipline.

**228** There is no limitation in point of time to the inquiry by a church court as to offenses against the discipline of the church. Quot. 438.

Bequest in trust for certain purposes valid.

**229** That the bequests to a church are in form given in trust for some particular purpose does not make them invalid, where the purpose is within its corporate powers. Quot. 490.

Lease creates a fee determinable.

**230** An instrument designated as a lease which in consideration of rents and covenants demised and leased the property to an individual for the benefit of a church society, during such time the society might use and occupy the premises as a church and pay as rents all assessments, created an estate in fee determinable, on the society ceasing to occupy the premises as a church. Quot. 569.

Deed to a bishop vests title in him not forfeited.

**231** A deed to the bishop of a church for the benefit of the church vests the complete legal title in the bishop, and the land is not forfeited to the grantor by the failure to occupy and use it for a church. Quot. 576.

Camp meeting not a religious society can not lease land.

**232** An unincorporated camp-meeting association is not a religious denomination or society within the statute authorizing such society to lease land. Quot. 584.

Lots donated without giving a deed.

**233** A church accepting two lots from the owner in payment of his subscription and building a church edifice thereon acquired an equitable unconditional title and the right to a full and legal title, and to dispose of them, although instead of giving a deed he merely marked on the plot of the city addition made by him that the

lots were donated for the use of the church. Quot. 522.

Power to admit and exclude in the Baptist Church.

**234** Under the rules and usages of the denomination of General Baptists the exclusive power to admit and exclude is in the local congregation, and the association have no power to review their action. Quot. 222.

A bequest of land to a church void without permission.

**235** A devise to a religious society without leave first obtained by such society to hold land from the legislature is void in Maryland. Quot. 603.

On division both parties have the right to use the church for divine services.

**236** Where there is a schism, or division in a religious society both parties are entitled to the joint use of the church for divine worship, but this provision of the statute does not apply where the seceding members unite with a distinct religious organization. Quot. 613.

Division of church property between two congregations out of one.

**237** Each division of a church congregation separated in two congregations by the action of its presbytery is entitled according to numerical strength to share in the property and funds of the old congregation. Quot. 615.

Purpose of a publication house and application of the proceeds.

**238** A publication house incorporated as an arm for the Methodist Episcopal Church for the manufacture and distribution of books disseminating religious knowledge with the purpose that the proceeds shall be appropriated for the benefit of the superannuated preachers is a religious charitable institution. The direct physical use of the books by the beneficiaries is not essential to this exemption, but the same may be sold and the proceeds applied to the use. Quot. 688.

Suspension of services by the order of a bishop will not be enforced by court.

**239** When the Supreme Court directs a conveyance of church property from the bishops to trustees for the congregation on the grounds

that under act of April 6th, 1855 Pamphlet Laws 328, the title is in the congregation and subsequently refuses to order a conveyance to the bishop as a trustee a bill by certain members of the congregation acting in pursuance to an order from the bishop to enjoin the holding of services in the church while the court's decision shall stand, will be dismissed. Quot. 735.

**240** As to revenue stamps on conveyances, see quot. 748. Revenue stamps on conveyances.

The foregoing quotations are collated under general subjects, namely:


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Correct answers to the following questions are obtained on due consideration of the quotations bearing number of the question in black type and more fully and extensive from decisions on the same subject found by examining the general index of subjects decided by the courts and quoted in the main part of the book under the numbers given in the index.

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**163** What are the principles upon which controversies in the civil courts concerning property rights of religious societies are generally decided?

**164** Is property conveyed to a religious society protected by the civil courts against diversion?

**165** What are the civil rights of pastors duly installed, and how can the pastoral relation be legally dissolved and a deposed minister be ousted?

**166** Can a deposed minister or an excommunicated member appeal to the civil courts?

**167** If a minister and his parish submit their differences to an ecclesiastical council what is the consequence of the council's decision?

**168** Can a local Baptist church dismiss the pastor?

**169** What is necessary to dismiss a pastor in the Episcopal Church?

**170** Can a church discharge its pastor, and what are the consequences if they do?

**171** What has to be done to establish a civil contract between pastor and congregation in a Presbyterian church?

**172** Are ministers in the Methodist Episcopal Church elected or appointed, and how are they appointed?

**173** How will congregational ministers forfeit the office?

**174** Is a minister, elected by illegally elected vestry without his knowledge of the illegality, entitled to the stipulated compensation?

**175** Can the vestry remove the rector by reducing his salary fixed at the time of his election?

**176** Can a clergyman sue for payment of his salary?

**177** What can be done if the trustees without right close the doors of the church against the duly appointed preacher?

**178** Who is to decide upon the pastor's teachings?

**179** Can a deposed preacher be enjoined from receiving voluntary contributions?

**180** What is the position of a pastor in regard to the parsonage land he occupies?

**181** Is property given for the support of a minister exempt from taxation in any state?

**182** What are the conditions on which a minister is exempt from taxation in any state exempting him?

**183** Is a clergyman indictable in the civil courts for an offense for which he was tried in an ecclesiastical court?

**184** Is church property subject to debt for pastor's salary?

**185** Can a Roman Catholic priest bring suit for his congregation without being authorized?

**186** Can the civil courts interfere with the removal of a priest by his bishop?

**187** Can the trustees of a Roman Catholic church permit an excommunicated priest to use the church edifice?

**188** In what capacity does a Roman Catholic priest occupy the parsonage?

**189** Can a Roman Catholic priest sue his bishop for his salary?

**190** Can a Roman Catholic priest remove a person from a sick room who is legally there?

**191** What is diversion of church property?

**192** Who can bring an action against diversion?

**193** Will the civil courts protect church property against diversion from original purposes?

**194** Who are secessionists?

**195** Can church property be diverted from original use under a plea of ecclesiastical rule?

**196** Is a conditional separation secession?

**197** Can chattles be carried off by seceders?

**198** Can seceders share in trust funds?

**199** Can damages be charged in the nature of mesne profits?

**200** Where is the authority to divide the property of a congregation out of which two congregations were created by action of the presbytery?

**201** Who is entitled to the use of church property as a legitimate successor?

**202** What is necessary to establish a sect or denomination?

**203** Can an incorporated church issue a proxy to be voted on at an election of officers for a company in which they hold shares?

**204** Can a court take the property of a religious corporation out of the hands of trustees and put it into the hands of a receiver?

**205** Where two parties claim to be the beneficiary can the court require an interpleader?

**206** Are the members of an unincorporated church liable *in solido* to a minister who knows that the expenses of the church are to be raised by voluntary contributions or assessments?

**207** Is it necessary that a majority of the members be present to constitute a corporate meeting of a religious society?

**208** What constitutes a quorum in a definite body of a corporation?

**209** In what form has a church organization to bring suit?

**210** In what form of proceeding can a treasurer or clerk be forced to turn over books and papers in his hands to his successor?

**211** Have the president and secretary of an incorporated society the implied authority to bind the society in a promissory note?

**212** Have trustees of a non-incorporated society legal capacity to sue in behalf of such society?

**213** Is it necessary that the majority of all members of a church sanction the sale of its property by one faction to the other faction, where presence of all to an open conference was permitted?

**214** Does the refusal of a Roman Catholic bishop to recognize a congregation prevent a Roman Catholic church society from exercising the powers of a corporation or prohibit its members from maintaining its religious worship?

**215** Can a fund collected for the use of the poor be used to pay church debts?

**216** Are prayer meetings and Sabbath schools divine services?

**217** Can religious societies mortgage personal property to secure their debts?

**218** Is a mortgage made due on dissolution of its connection with the Presbyterian Church contrary to public policy?

**219** Is a corporation organized to maintain a college bound by contracts for buildings made by synod for the use of the college?

**220** Is an agreement of a compromise of a suit by a majority of a church society acting in a collective *quasi* corporate character binding?

**221** What law governs a voluntary religious association that has adopted a written constitution?

**222** Can money borrowed from a church be collected from the borrower and his security?

**223** Can a subscription for the rebuilding of a church be collected, and what form of action has to be brought for its recovery?

**224** What disposal is made of surplus funds from a legacy on dissolution of a religious corporation?

**225** Can copy from church book from the party in possession be obtained by the opposite party to be used in a suit in court?

**226** Who is entitled to the parish property of a town when the inhabitants become divided into societies?

**227** What powers has a synod over its constituent presbyteries?

**228** Is there a limit to the time of enquiry by a church court as to offenses against church discipline?

**229** Is a bequest to a church in trust for certain purposes valid?

**230** What kind of title gives a lease from one church to another?

**231** Does land deeded to a bishop for a church revert to the grantor if the land is not used and occupied by a church?

**232** Can an unincorporated camp meeting lease land?

**233** Is the title to land donated good without a deed?

**234** Who has the power to admit to or exclude from membership in the Baptist Church?

**235** Is a bequest of land to a church valid in Maryland without permission from the legislature?

**236** Can both parties use the church for divine services when divided into two factions?

**237** How is the church property divided on division of one into two congregations by action of presbytery?

**238** Is a publication house that appropriates its income to the support of superannuated ministers a charitable institution not liable to taxation?

**239** Will the court issue an injunction against the holding of divine services in a church on a petition filed by order of a bishop?

**240** As to revenue stamps to be placed on deeds, notes and mortgages.